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Small Business Administration
Atlanta, Georgia Size Standards Hearing
June 9, 2005
Fulton County Public Library
Third Floor Meeting Room
Atlanta, Georgia
9:30 a.m.

Reported by Maureen S. Kreimer, RPR
Certified Court Reporter

1 HEARING PANEL:

2 LAURA MANN, Attorney,
3 SBA Office of the General Counsel

4 DIANE HEAL, Program Analyst, SBA Office of
5 Policy, Planning and Liaison

6 NUBY FOWLER, SBA Southeastern Regional
7 Administrator

8 MITCH MORAN, Atlanta Area Director SBA Office of
9 Government Contracting

10 TERRI DENISON, SBA Georgia District Director

11 Also present:

12 STEVE SMITHFIELD, Area Size Manager, Government
13 Contracting

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1 MS. MANN: Good morning, everybody. Today
2 is Thursday June the 9th, and the time is
3 approximately 9:30 a.m. This is a public
4 hearing conducted by the U. S. Small Business
5 Administration at the Atlanta Fulton County
6 Library, One Margaret Mitchell Square in
7 Atlanta, Georgia.

8 This hearing is being conducted pursuant
9 to the Notice of Public Hearing published in the
10 Federal Register on May 12th, 2005, at 70
11 Federal Register page 25133.

12 The purpose of today's hearing is to
13 obtain the views of SBA stakeholders, all of
14 you, on how to improve the Agency's size
15 standards and whether businesses that are
16 majority-owned by venture capital companies
17 should be allowed to participate in our SBIR
18 Program, which is our Small Business Innovation
19 Research Program.

20 My name is Laura Mann. I am the senior
21 attorney with SBA's Office of General Counsel
22 and I'm going to moderate today's hearing.

23 Joining me today is Nuby Fowler. She is
24 administrator for SBA Region 4, and she'll be
25 providing opening remarks.

1 MS. FOWLER: Thank you. Well, welcome,
2 and hopefully the traffic was not too bad for
3 you. Good morning, and welcome to the Atlanta
4 Size Standards hearing. I am Nuby Fowler, the
5 Region 4 Administrator, and I oversee the states
6 of Georgia, Alabama, Kentucky, North Carolina,
7 South Carolina, Tennessee, Mississippi and
8 Florida.

9 I am very pleased to host this hearing so
10 that you can tell us what you're thinking. The
11 mission of SBA is to maintain and strengthen the
12 nation's economy by aiding, counseling,
13 assisting, and protecting the interests of small
14 businesses, and by helping families and
15 businesses recover from national disasters.

16 I oversee SBA's capital access training,
17 technical assistance, and procurement programs
18 in the region. Size standards is a fundamental
19 issue within SBA since it determines which
20 businesses are eligible for SBA assistance,
21 small business preferences on Federal contracts
22 and small business assistance for many other
23 Federal programs and regulations.

24 The purpose of today's hearing is to hear
25 from you on issues pertaining to size standards,

1 in particular on ways that the SBA may simplify
2 size standards and other ideas to make size
3 standards easier to understand and use.

4 The testimony presented at today's size
5 standards hearing along with other comments we
6 receive to the December 2004 Advance Notice of
7 Proposed Rulemaking will be used to help us
8 develop new proposals to further those
9 objectives.

10 We are also taking the opportunity at
11 these hearings to seek the public views on
12 whether businesses, majority-owned by venture
13 capital companies should be allowed to
14 participate in the Small Business Innovation
15 program.

16 On behalf of myself and Administrator
17 Hector Barreto, we thank you for taking the time
18 out of your busy schedule to be here with us. I
19 will now turn the hearing over to Diane Heal.

20 MS. HEAL: No, Laura.

21 MS. FOWLER: Oh, to Laura. Wrong name.
22 And she will introduce the panelists and go over
23 the ground rules for the hearings. Once again,
24 thank you so very much for being here. And if
25 you're wondering where my accent is from, I was

1 born in Colombia, South America, and I have been
2 here 44 years. I came when I was 40 days old.
3 Thank you.

4 MS. MANN: I'm going to first go over the
5 ground rules for the hearing. First, breaks.
6 The hearing is scheduled to go to 6:30 tonight.
7 I don't anticipate needing to go that long. I
8 think we're going to get everything done this
9 morning. We're scheduled to go for a lunch
10 break between 1:00 and 1:30.

11 I am hoping to go straight through the
12 whole morning, get all the testimony done in the
13 morning and then end the hearing at that point.
14 But at 11:30 I'd like to take a 15-minute break
15 for everybody, the court reporter needs it,
16 we're all going to need a break. So around
17 11:30, I'm not going to cut a speaker off, but
18 right after that last speaker speaks, we'll take
19 our break.

20 At this point, we have 85 individuals who
21 are registered to attend the meeting today.
22 Looks like not everybody might show up, some
23 people might come late, we have 30 who were
24 preregistered to testify.

25 What I'm going to do is I'm going to call

1 the people here that I know that are already
2 signed in that are preregistered to testify.
3 After everybody who is preregistered to testify
4 has spoken, and I see we have time left, which I
5 think we will, I'll let anybody else here in the
6 audience go ahead and speak, because the purpose
7 of this hearing is for SBA to hear all of your
8 views on size standards and the one SBIR issue.

9 And so you know, it was announced in the
10 public hearing notice, this is being recorded,
11 we have a court reporter here who's transcribing
12 all your testimony.

13 The purpose of it is because it's going to
14 become part of SBA's administrative record so
15 that once all the hearings are done, everybody
16 is going to read through this, the hearing
17 transcript, and we're going to look at all the
18 views expressed across the 11 areas where we had
19 the hearings, as well as look at I think over
20 2,000 comments that came in on the Advance
21 Notice of Proposed Rulemaking.

22 The subject matter of the hearing, this is
23 important because we've had in the past, some
24 people have veered off the subject matter of the
25 hearing, we have a limited purpose here. The

1 purpose of this hearing is to learn from you
2 ways to simplify and improve SBA's size
3 standards. In the Advance Notice of Proposed
4 Rulemaking we set forth 11 topics. You can veer
5 off the 11 topics so as long as it pertains to
6 the size standards, and the one SBIR issue
7 dealing with the venture capital companies.

8 But if you start talking about something
9 that's completely unrelated to size standards,
10 if you have concerns about contracts, I'm going
11 to stop you and ask you to stay back on course
12 because we have a limited purpose for this
13 hearing.

14 Testimony. I'm going to go through the
15 list, ask you to step up to the podium, ask you
16 to state your name, state the company or the
17 business or association you're representing. I
18 may need you to spell your name especially if
19 it -- well, I'm going to ask you to spell your
20 name for the court reporter's purpose because on
21 the list we have a couple of names that are
22 misspelled. In addition, some people are here
23 that are representing people we had on the list,
24 so the court reporter is not going to know how
25 to spell your name, and we need this for the

1 record.

2 After your testimony, if you could please
3 provide a copy of your written testimony to --
4 I'm going to say go ahead and provide it to
5 Diane?

6 MS. HEAL: Well, to Steve. Because he's
7 going to collect it and then send it to the
8 office.

9 MS. MANN: So if you could provide it to
10 Steve. He's sitting over here. That way we can
11 have one person collecting all the written
12 testimony.

13 Your testimony is going to be limited to
14 five minutes. I'm going to keep you to the
15 five-minute time limit. Like I said, we do have
16 30 people that were registered to attend to
17 speak, I think more people will be coming, it's
18 important I keep it to the five minutes; if I
19 let everybody one speak for 10, 15 minutes about
20 anything they wanted to, we'll be here to the
21 end of next week.

22 So, I'm going to signal you when I see
23 that you're not really concluding or wrapping up
24 and getting close to the five-minute mark, and
25 if you go over the five minutes, I'll interrupt

1 you and ask you to start concluding your
2 testimony.

3 The panel. Okay. We have our panel of
4 experts here. I am going to let them introduce
5 themselves, but first I'm going to explain to
6 you what is the purpose of the panel and the
7 what is not the purpose of the panel.

8 The purpose of the panel here is to seek
9 clarification from you about your testimony.
10 You're going to be explaining your views and
11 your thoughts on size standards and the SBIR
12 issue. In order for us to better understand
13 what you're talking about, they may have to ask
14 some clarifying questions.

15 In addition, there may be statements made
16 we've had in the past, maybe there is a
17 misunderstanding about the whole process dealing
18 with the proposed rule, the Advanced Notice of
19 Proposed Rulemaking, and we're here to clarify
20 those issues as well.

21 The panel is not here to engage in any
22 kind of debate with all of you about SBA size
23 standards, contracting, whatever. And we're
24 certainly not here to express at this point in
25 time SBA's opinions on this matter, okay, I just

1 want to tell you what they're here to do and
2 what they're here not to do.

3 And then I'm going to let the panel
4 introduce themselves, and I'll start with Mitch.

5 MR. MORAN: My name is Mitch Moran. I am
6 the area director for government contracting for
7 Area 3, and I have with me one of my staff
8 members, Steve Smithfield, who is the area size
9 manager that works in government contracting.
10 Thank you.

11 MS. HEAL: I am Diane Heal. I am from the
12 Office of Size Standards in Washington, D. C.

13 MS. DENISON: I am Terri Denison, and I am
14 the State Director for the U. S. Small Business
15 Administration.

16 MS. MANN: All right. Since we're very
17 interested in hearing what everyone has to say,
18 we're going to go ahead and get started. And
19 the first person I know is here to speak is
20 Bruce Downs. Mr. Downs? Maybe not.

21 MR. DOWNS: I am here; just wasn't ready
22 to be first. Good morning, my name is Bruce
23 Downs, I represent Wave7 Optics. We're a
24 startup company, a small company in the
25 telecommunications manufacturing sector. Name

1 is spelled B-R-U-C-E, D-O-W-N-S. We applaud the
2 Agency -- first of all, thank you for giving us
3 the opportunity to testify and participate in
4 the process, you know, sometimes we get these
5 regulations down from on high and that's a
6 little bit frustrating.

7 We applaud your efforts to restructure and
8 simplify the standards. We also believe that by
9 applying the industry size standards that
10 currently apply to the security, to the
11 government procurement to the surety bond
12 guarantee program, that SBA could better serve
13 the backbone of the U. S. economy small
14 businesses.

15 Wave7 would like to offer a few
16 observations on how to proceed; and from the
17 proposed rulemaking underway, it looks like
18 you're looking for consistency, fairness and
19 simplicity, and we share the goals.

20 I'll address each of these factors in a
21 second, but our key suggestion would be to offer
22 that the Agency involve -- you know, currently
23 they require only a receipts-based test for the
24 surety bond guarantee, and we don't think that's
25 fair. It's a six-million-dollar cap that

1 applies evenly across all industries, and if you
2 make brooms, six million dollars is a lot of
3 sales. If you make, you know, if you install
4 pools, you can pretty much go through that
5 pretty quickly. So, it's arbitrary, too
6 arbitrary to be fair, in our opinion.

7 When you look at simplicity, one of the
8 things you can do is go to, to make it a more
9 consistent program, surety bond guarantees is an
10 arbitrary six-million-dollar cap, and you have
11 an industry-based, employee-based standard, of
12 how many employees you have by that industry,
13 which we think is more fair for getting
14 qualified as a small business for government
15 procurement, and we'd like to apply that
16 standard to the surety bond guarantees.

17 There is an external consistency issue.
18 We currently market our products to, through a
19 USDA program, the Rural Utility Services
20 Commission, RUS contracts, you'll hear about
21 those, they offer grants and low cost loans to
22 local communities, to small telephone companies,
23 to small cable companies, service providers out
24 there to put infrastructure in to provide
25 universal access to their customers.

1 To participate in that most of the time
2 you're required to pay a bond. We think that
3 this bond is punitive for small companies just
4 entering the industry. You know, a big company
5 has access to capital, they have assets that
6 they can pledge, they can get low-cost loans to
7 offer that bond; however, you know, small
8 companies don't have that excess capital. It
9 costs us a lot more money in order to enter that
10 marketplace and provide those services.

11 We believe the bonds and the RUS stuff are
12 good. They do protect the communities in case
13 the companies that are installing the assets,
14 you know, fail, or the product doesn't perform
15 as required, but we think that small companies,
16 small technology companies, should be able to
17 get the benefit from SBA of getting those bonds
18 guaranteed.

19 Small companies like Wave7 Optics are
20 daily bringing innovation to the broadband
21 market, and we really believe we can provide
22 faster, better, more stable products to the
23 customers out there. We already are in the
24 rural communities, but we'd like to do a whole
25 lot more.

1 I believe the following programs would
2 also benefit from broadening the access to SBA's
3 surety bond guarantees which will complement and
4 enable them to accomplish their goals. The FCC
5 has a universal access policy, that's kind of
6 that political mantra net out there, to make
7 sure that the rural communities and underserved
8 or unserved areas are able to participate in the
9 political process. We provide, companies like
10 us, provide telecommunications, infrastructure,
11 cost-effective telecommunications
12 infrastructure, that allow them to do that.

13 And the big companies, the big
14 multinational companies, you know, they are
15 focused on big customers, they focused on big
16 cities, they're focused on people with a whole
17 lot of money to spend and, you know, they just
18 kind of all put their products out there in
19 those marketplaces. We're focused on those
20 marketplaces.

21 MS. MANN: Can I interrupt you for one
22 moment? It seems that you might be veering off
23 a little bit.

24 MR. DOWNS: Okay.

25 MS. MANN: Are you talking about access to

1 surety bonds because you want the size standard
2 changed and it would broaden the access to these
3 companies for the surety bond? Is that --

4 MR. DOWNS: That's an excellent question.
5 Right now most technology companies, start-up
6 technology companies, it costs a whole lot of
7 money to develop, for example, we developed an
8 ASIC product, and it costs a lot of money, it
9 takes years of development to get these out
10 there before we see any money back. So the
11 receipts-based standard is not fair for SBG.

12 What we would like to do is have --
13 currently in our industry, 150 person size would
14 qualify for a small business eligibility for
15 government procurement, but doesn't qualify for
16 the guarantees. Does that make sense?

17 So, the real thing is we just want it to
18 apply consistently. It will simplify your rules
19 because of having two standards for the two main
20 things that you offer, you have one standard
21 that you can apply evenly across it.

22 We don't think you should apply a
23 receipts-based test just because it's different
24 for every industry and it's different for
25 different companies inside the industry as well.

1 Does that answer your question?

2 MS. MANN: Yes. I need you to start
3 concluding.

4 MR. DOWNS: I do want to respond quickly
5 to the venture capital question. And you know,
6 I know the scope is related to SBIR. We do
7 believe that companies owned by venture capital,
8 principally owned by venture capital, should be
9 able to participate. It just costs a lot of
10 money; again, the same kind of economic scale
11 issue, it costs a lot of money to do that type
12 of development. And to get the maximum benefit,
13 you need to take advantage of companies that may
14 have to get their capital from those sources.

15 MS. MANN: Okay.

16 MR. DOWNS: And that concludes my
17 testimony. I'll be happy to answer any other
18 questions you might have.

19 MS. MANN: Does anyone have any questions?
20 No. Thank you.

21 MS. HEAL: Thank you so much.

22 MR. DOWNS: Thank you.

23 MS. HEAL: Can we have a copy of your --

24 MR. DOWNS: I'm going to pull one out of
25 my bag.

1 MS. HEAL: Okay. Great. Thank you.

2 MS. MANN: Next on my list I have Quaison

3 Payne. Mr. Payne? No. Okay. We can go on.

4 Haywood Curry. Mr. Curry?

5 MR. CURRY: Good morning. My name is

6 Haywood Curry. I am president of Engineering

7 Design Technology. And my name is

8 H-A-Y-W-O-O-D, last name C-U-R-R-Y.

9 Engineering Design Technology is a small
10 engineering and construction company. We
11 provide services in the area of civil,
12 structural, mechanical and electrical
13 engineering and also construction.

14 We have been in business since 1993, and
15 have tried to compete into the marketplace of
16 large business. We have found that we are not
17 able to be competitive. In 1995 we got involved
18 with the small business industry through the
19 U. S. Federal Government and an 8(a) program.

20 This program has saved our company because
21 it leveled the playing fields in which we could
22 participate, instead of participating against
23 large businesses which had bonding capacity and
24 a lot more assets than we did, we are able to
25 survive in this marketplace and provide a profit

1 and provide opportunities for other people and
2 employees at our business.

3 It has given us the opportunity to grow
4 our business and enjoy a growth that was not
5 available in the marketplace that we were
6 playing before we entered into the 8(a) program
7 of working with the small business.

8 If the Federal Government let large
9 business small enterprises into this program, it
10 will not be a level playing field. They will be
11 able to have assets and more resources than we
12 as a small business would, and it would have a
13 tremendous affect upon our operation and our
14 capacity to grow.

15 One example is bonding capacity. Bonding
16 is a big issue in the construction industry
17 today. If I have to compete with large
18 companies with capacity, that are able to pass
19 that bonding capacity on, then that level, that
20 playing field is not level for me. I would not
21 be able to get jobs. I would not be able to
22 estimate jobs, and the cost would not be in the
23 range that I could afford.

24 I hope that you will consider the effect
25 of letting large businesses with entities into

1 this arena because it would cause a tremendous
2 problem on small business in this area. Thank
3 you very much.

4 MS. HEAL: Mr. Curry, I have a question.
5 When you were talking about allowing large
6 businesses?

7 MR. CURRY: Yes.

8 MS. HEAL: What are you directly --
9 because we're not --

10 MR. CURRY: Well, you would have large
11 businesses that would have subsidiaries.

12 MS. HEAL: We don't allow large businesses
13 that have subsidiaries to be small businesses
14 now.

15 MR. CURRY: According to what you have --

16 MS. HEAL: No. I am just -- I'm sorry.

17 MS. MANN: I think specifically what we
18 need to know, how would you define a large
19 business?

20 MR. CURRY: Well, somebody like Bechtel.
21 They have subsidiary companies.

22 MS. HEAL: They would not be allowed in --
23 they are not allowed in the program now, nor
24 would they be allowed in the program.

25 MR. CURRY: But they have subsidiaries.

1 MS. HEAL: The size standard includes the
2 affiliation rule and always has and always will
3 include the affiliation rule that when
4 determining the size of a company you include
5 the revenues, or the employees, depending on
6 what the size standard is of a company, and all
7 its affiliates, divisions, worldwide.

8 MR. CURRY: And that's what I am saying
9 that I hope that you will take into
10 consideration.

11 MS. HEAL: That is not changing.

12 MS. MANN: Well, I mean, that was -- and I
13 think that's what his testimony is. I want to
14 just clarify, you don't want us to change the
15 affiliation rules?

16 MR. CURRY: I don't want you to change
17 that. I don't want you to change that at all.

18 MS. MANN: You like them the way they are
19 now?

20 MR. CURRY: Yes.

21 MS. MANN: And the size standards, you're
22 happy with the way the size standards are now?

23 MR. CURRY: They way they are now, because
24 the playing field is level. But you take that
25 into consideration and let other subsidiaries

1 with small business in there, it would not be a
2 playing field that I could compete, participate
3 in.

4 MS. MANN: Thank you. Did anyone else
5 have any questions?

6 MS. DENISON: I have one question. Do you
7 feel the size standard for your particular
8 industry, the upper limit is too high?

9 MR. CURRY: That's something that you, you
10 know, once we start growing, we're hoping to be
11 a big business, too, and hoping that we can get
12 out of this arena also. But right now, in order
13 for us to grow, I am saying that we need this,
14 the program that you've got now.

15 MS. HEAL: Okay.

16 MR. CURRY: But once -- if I can stay in
17 this arena, and I have shown growth, I think
18 Engineering Design has shown growth, we're
19 willing to grow and we're willing to get out of
20 this program. But if you don't help us to do
21 that, then we won't be a large business.

22 MS. DENISON: Thank you.

23 MR. CURRY: Thank you.

24 MS. MANN: Thank you very much. A couple
25 requests from people who want to be moved up,

1 sorry, because they had to leave. I have
2 Charles Craig. Mr. Craig.

3 MR. CRAIG: Thank you, and good morning.
4 My name is Charles Craig. And it's
5 C-H-A-R-L-E-S, C-R-A-I-G. And I am the
6 president of the Georgia Biomedical Partnership.

7 The Georgia Biomedical Partnership is a
8 nonprofit organization representing the life
9 sciences companies in Georgia. We're also the
10 state affiliate for the biotechnology industry
11 organization in Washington. Many of our members
12 are small emerging life sciences companies
13 engaged in the research and development of
14 innovative medicines and medical device
15 products.

16 On behalf of these companies and the GPB
17 and Bio, I would like to thank the Small
18 Business Administration and the members of the
19 hearing panel for conducting this series of
20 public hearings to provide the small business
21 community an opportunity to comment on the
22 future of SBA's size standards.

23 My comments today will focus on an issue
24 that directly affects many of the GBP member
25 companies, the obstacles to participation in the

1 Small Business Innovation Research Program by
2 businesses that are majority-owned by venture
3 capital companies.

4 The SBIR Program is an important source of
5 funding for early stage research efforts of life
6 sciences companies such as pharmaceutical,
7 biotech and medical device companies.
8 Specifically, small life sciences companies rely
9 on Phase I and Phase II grants to fund the
10 cutting edge research in areas where venture
11 capital and other sources of financing are
12 difficult to obtain.

13 However, to be eligible for an SBI award,
14 a business concern must be at least 51 percent
15 owned and controlled by individuals who are
16 citizens of the United States.

17 In addition, the concern may not have more
18 than 500 employees, including its affiliates.
19 Through a series of rulings, SBA's Office of
20 Hearing and Appeals has interpreted the term
21 individuals to mean human beings. This
22 interpretation excludes corporations and all
23 other forms of artificial entities including
24 venture capital companies. There is no
25 statutory requirement that compels this

1 interpretation, nor is there a definition of the
2 term individual in the law establishing the SBIR
3 Program.

4 As a result, many small businesses in the
5 pharmaceutical, biotechnology and medical device
6 sectors cannot participate in the SBIR Program
7 because one or more of their owners or investors
8 is a corporate entity or a venture capital
9 company.

10 The unnecessary exclusion of these small
11 businesses is not consistent with the purpose of
12 the SBIR Program, which is to stimulate small
13 businesses that will commercialize important
14 technological investments.

15 The exclusion could also lead to a decline
16 in the quantity of SBIR grant applications
17 submitted to the National Institutes of Health
18 and other agencies involved in bioterrorism and
19 other important health-related activities.

20 In early 2005 the biotechnology industry
21 organization conducted an informal survey of its
22 members active in the SBIR community. The
23 survey results confirm that the SBA's
24 interpretation is limiting many small biotech
25 companies from participating in the SBIR

1 program.

2 Although over 70 percent of the survey
3 respondents were privately owned small
4 businesses with less than 50 employees, many of
5 them reported that they are ineligible to
6 receive an SBIR grant. Specifically of the
7 privately held companies, 70 percent are
8 majority-owned and controlled by multiple
9 venture capital companies. The number of
10 venture capital companies that have an equity
11 stake in the small companies range from 2 to 22.

12 Only one venture capital company has an
13 equity stake greater than 40 percent in a survey
14 of respondents, while most venture capital
15 companies own between 7 percent and 30 percent
16 of the small businesses. Over the last five
17 years, 62 percent of the survey respondents,
18 which are public and private companies, applied
19 for SBIR grants. Exactly half of these
20 applicants were either denied SBIR grants
21 immediately because they could not meet SBIR
22 eligibility requirements due to their ownership
23 structure, or were subsequently denied the grant
24 due to an adverse size determination.

25 Finally, over 60 percent of the privately

1 held companies responded that they have chosen
2 not to apply for SBIR grants due to perceived
3 eligibility concerns.

4 To remove this barrier to participation to
5 the SBIR program, we urge the SBA to revise the
6 SBIR eligibility requirements and issue a
7 proposed rule that reflects Congress's original
8 intent to encourage awards to small businesses
9 that have successfully attracted outside
10 investors.

11 The approach proposed by SBA in its
12 December 3, 2004 Advanced Notice of Proposed
13 Rulemaking to disregard affiliation is a step in
14 the right direction. However, it does not
15 address the fundamental obstacle, which is SBA's
16 requirement that small businesses be
17 majority-owned and controlled, directly or
18 indirectly, by individual human beings.

19 We recommend that the SBA adopt a rule
20 that addresses the actual ownership structure of
21 small biotechnology companies that are owned and
22 controlled by venture capital companies.

23 Specifically we suggest the size
24 requirements be revised to permit venture
25 capital company ownership of SBIR applicants to

1 count toward the 51 percent U. S. ownership and
2 control requirement.

3 This will allow greater participation in
4 the SBIR program by small biotechnology
5 companies, but would not permit participation by
6 venture-owned firms that are affiliated with
7 large companies.

8 If these proposed changes are enacted,
9 Georgia's emerging life sciences companies would
10 be able to take advantage of this important
11 program and participate in research efforts that
12 are critical to our nation's health, safety and
13 security.

14 And I would just like to add one other
15 thing.

16 MS. MANN: Yeah.

17 MR. CRAIG: The investment risks taken by
18 U. S. venture capitalists and U. S. Government
19 through programs like the SBIR grants, have made
20 the U. S. an undisputed world leader in
21 biotechnology at a time when this technology is
22 beginning to pay huge health and economic
23 dividends.

24 It's a public-private sector collaboration
25 success story. It's a huge success story. This

1 is not the time for the government to pull back
2 its support. The rest of the world has awakened
3 to the potential of biotechnology and before
4 long we will face serious competition from Asia
5 as well as Europe. Thank you.

6 MS. HEAL: I have a question, or I want to
7 clarify. Last year SBA did change its rules to
8 allow a corporation to own a company, eligible
9 for the SBIR program.

10 MS. MANN: Are you familiar with the -- we
11 did a proposed rule. Originally the proposed
12 rule said that they were going to allow a
13 company 100 percent owned an SBIR applicant. We
14 ended up amending at 121.702. Doesn't broaden
15 it the way you want it to read, but what we do
16 allow now is a concern which is at least
17 51 percent owned and controlled by another
18 business concern, that's its 51 itself owned and
19 controlled by individuals.

20 And then we also opened it up. We had a
21 lot of comments on ESOP ownership because we're
22 seeing that a lot more on small business and
23 trusts as well. I don't really think it gets to
24 your issue because it seems to me, from your
25 testimony, anyway, I want you to explain that,

1 venture capital are owning -- there is several
2 venture capital firms that own small businesses?

3 MR. CRAIG: Right.

4 MS. MANN: So you'll have like five or
5 six, and you don't have just one venture capital
6 company owning the 51 percent.

7 MR. CRAIG: But it adds up to 51 percent.
8 And our experience here in Georgia is that a lot
9 of the companies are not applying for these
10 grants. So, it was difficult for me to get an
11 accurate picture of the number of companies that
12 are being affected by this, because what I found
13 is that they are just not applying, so we don't
14 know -- I just can't tell you how many of them,
15 but it is a significant barrier to these
16 companies getting the money they need to conduct
17 their research.

18 MS. MANN: I have no further questions.
19 Thank you.

20 MS. HEAL: Thank you.

21 MS. MANN: Dwayne Edmond. Okay. We'll do
22 David Black.

23 MR. BLACK: Thank you for letting me move
24 up. My name is David Black. Thank you, I
25 appreciate the opportunity to address this

1 hearing panel as the small business owner of
2 Express Personnel Services. The issue we're
3 dealing with is a franchise owner not being able
4 to be considered as a small business by you
5 guys. Did I say that right?

6 MS. HEAL: It's just for the temporary
7 help industry, not the franchise overall?

8 MR. BLACK: Yes. And in my mind, I am the
9 local owner. My dream has always been to own my
10 own business, and less than a year ago I
11 achieved that dream. I found that being
12 compared to other franchise owners I am being
13 penalized, or even discriminated, in that not
14 being designated as a small business owner, I do
15 not qualify for certain government job
16 opportunities.

17 Yet I could greatly help the government by
18 providing the people to these jobs. I am in the
19 people business. I provide people, i.e.,
20 workers to client companies in the Atlanta area
21 I have been contracted with my franchisor to
22 supply. They provide me with back office
23 support such as payroll and billing services.

24 Viewing franchising and the staffing
25 industry as one entity is not accurate as it may

1 appear that I may not be a small business owner,
2 but that's the very essence of franchising. The
3 franchisor provides a specific support service,
4 so, again, I have simply contracted with Express
5 Services to be my support for specific services
6 like payrolling.

7 There are a few points I'd like you to you
8 consider. My business is an independent
9 corporation. I have my own Federal ID number,
10 state and local tax identification numbers,
11 worker's comp, county and state unemployment
12 accounts. My business is separate and distinct
13 from the franchisor, Express Services Inc. The
14 franchisor has no oversight or responsibility
15 for my day-to-day business operations.

16 I have the sole responsibility for
17 recruiting, screening, hiring, disciplining and
18 terminating and training temporary workers. I
19 assign them to their respective clients. I
20 cover all recruiting costs including background
21 checks, drug tests, skill tests, job training,
22 advertising. I am responsible for covering
23 overhead costs and for securing and repaying any
24 and all business loans that we receive from
25 banks. I pay federal, state and local income

1 taxes for internal staff as well as the
2 employer's share of Social Security, federal and
3 state unemployment insurance taxes, and worker's
4 compensation.

5 I provide fringe benefits for my staff,
6 including health and life insurance as well as
7 vacation and holidays. I hire my own
8 accountants and attorneys to manage and oversee
9 these functions. Please note the respective
10 roles of my franchisor and my business
11 distinguish us from other franchise businesses,
12 especially those that provides goods and
13 services to walk-in customers such as office
14 supply stores and fast food restaurants.

15 Here are a few examples. Because we're in
16 the people business and not the over the counter
17 product business, my business contracts through
18 the franchise agreement with Express Services to
19 perform the administrative responsibilities of
20 receiving the accounts receivables from the
21 client. My business receives a percentage of
22 those invoices as provided in the franchise
23 agreement.

24 As an independent franchise owner, I have
25 the sole responsibility for the credit

1 collection process should a client fail to pay.
2 Under our franchise agreement the franchisor
3 assumes responsibility for processing my payroll
4 in order to ensure proper withholding and
5 payment, although the franchisor processes the
6 payroll checks for my business, I am responsible
7 for actually issuing the checks to employees.

8 As an example, I have a client one block
9 from here and here's the payroll checks. I
10 don't have copies of those for you.

11 MS. HEAL: Please don't.

12 MR. BLACK: In order to ensure compliance
13 with applicable rules and regulations, the
14 franchisor serves as employer of record for
15 Federal withholding purposes for the temporary
16 workers, which I hire and place. All day-to-day
17 activities with respect to the employment of
18 temporary workers are conducted by me.

19 In conclusion, please consider the
20 following factors when determining small
21 business status. I bear the entire risk of
22 financial loss from my business operations. I
23 retain the majority of the profits from this
24 business. I maintain day-to-day control over
25 its operations. I provide the financing for my

1 company without any recourse or indebtedness
2 repayment to the franchisor. There is no common
3 ownership or management between the franchise
4 owner and the franchisor. Thank you very much.

5 MS. HEAL: Mr. Black?

6 MR. BLACK: Yes.

7 MS. HEAL: Whose employees are you
8 placing?

9 MR. BLACK: The employees are temporary.
10 Legally they are employees of Express Services.

11 MS. HEAL: Of the franchisor?

12 MR. BLACK: Yes.

13 MS. HEAL: Because that's a problem. And
14 the only reason I am bringing that up is because
15 there is an OPM regulation that says in order to
16 get a government contract, you must place those
17 employees that are your own. And that's part of
18 the concern.

19 MR. BLACK: That's part of the
20 distinction.

21 MS. HEAL: That's part of the concern that
22 we have, and we have seen because I have worked
23 on this, I've seen certain franchise agreements
24 where the employees are those of the franchisee.

25 MR. BLACK: Yes, yes.

1 MS. HEAL: They have made those different
2 levels of distinction, and that's what I am
3 trying to get more information on as to how,
4 because of this OPM requirement, you know, which
5 kind of restricts companies your industry to
6 place employees, and part of that is also
7 looking at the management of who are you
8 placing, you know, because that's that fine line
9 that we're looking at. Do you have anything on
10 that?

11 MR. BLACK: Yes. The fully temporary
12 employee, the person that's going to go out
13 there for a very short time is an employee. If
14 I place --

15 MS. HEAL: Employee of the franchisor?

16 MR. BLACK: -- franchisor. By legal
17 determination, I still have to take care of
18 collecting the payroll and running it through
19 them. I have to take the risk of their
20 performance, their skill testing, so I do have
21 the burden.

22 The two other factors, if someone wants
23 what we call an evaluation, hire a person,
24 where they try -- that can be my employee, but
25 most specifically, if I am doing recruiting for

1 any client, any government agency, that employee
2 is not -- that would either be my employee or
3 directly to them, and they pay me a fee for that
4 recruiting effort. So, there would be no
5 contact with the franchisor in that regard. We
6 call it a direct hire employee. You might call
7 it search, professional search, executive
8 search, doing that function where the status of
9 their employment is directly to that client
10 company directly and I am serving a search
11 purpose.

12 MS. HEAL: All right.

13 MR. BLACK: If that helps.

14 MS. HEAL: That does. Thank you.

15 MR. BLACK: I'm sorry, any questions?

16 MS. MANN: No. Next on my list I have
17 Joyce Edwards.

18 MS. EDWARDS: My name is Joyce Coleman
19 Edwards. And I am here representing two
20 business entities. I am the chair of the board
21 for the board of directors for the Women's
22 Economic Development Agency, an SBA partner
23 function and I am also, which is clarification,
24 is a nonprofit organization dedicated to the
25 advancement of women and men economically

1 through our entrepreneurial endeavors. We train
2 women and men to start maintaining and grow
3 businesses. I'm also the director of marketing
4 for an MBE WBE called Duckett Design Group, Inc.

5 Duckett Design Group is a 20 year-old
6 African-American female-owned architectural and
7 interior design firm. We specialize in
8 judicial, governmental, public and medical
9 projects. 75 percent of our business is with
10 either city, county or state governments. We
11 have 13 employees, all seasoned professionals
12 very versed in architecture, interior design,
13 space planning, programming, urban planning and
14 furniture procurement.

15 We are former 8(a) participants having
16 graduated the program in 2003, never receiving a
17 single project from the program. During our
18 time in the program we sought many 8(a)
19 set-aside projects, especially in the judicial
20 and medical arena, but were not able to
21 successfully win any of those projects.

22 We found ourselves time and time again
23 competing with much larger firms who were also
24 under the classification of small business. The
25 firms that we were competing with are equipped

1 with hundreds of employees, several locations
2 and deep pockets in their marketing budgets. We
3 were told that in order to get our foot in the
4 door we should partner with majority firms that
5 could use our expertise, which is judicial
6 design, and had the clout to actually get the
7 job.

8 The problem with that concept is that most
9 majority firms in our specialty already have our
10 specialty in-house, therefore, it is not really
11 necessary to quote, unquote, share the wealth of
12 smaller firms for the sake of equal opportunity
13 or the chance to help grow a smaller business.

14 I am here today to promote the concept of
15 changing the size standard so that my company
16 and other small businesses are represented
17 through WEDA, can compete equally and fairly for
18 Federal government work in a fair, competitive
19 market. We are in favor of using the number of
20 employees of a firm, not necessarily the revenue
21 of a firm, to be considered in grouping firms
22 for competing work with the Federal Government.

23 The playing field has to be level so that
24 small businesses can compete apples to apples
25 and not apples to watermelons.

1 If SBA is truly interested in growing,
2 increasing, small businesses by issuing programs
3 that encourage them to go after federal
4 government business, there has to be a realistic
5 chance that some of those businesses, or many of
6 those businesses will succeed. Small businesses
7 don't have time to have the time or the
8 resources to lobby to majority firms or high
9 ranking government officials just to get the
10 chance to maybe perhaps apply, only to be turned
11 down for government work.

12 I appreciate the opportunity to speak with
13 you today. I hope that our recommendations of
14 considering a size standard that is more
15 conducive to small businesses, in other words,
16 comparing, for instance, our staff is 13 but
17 we're competing against companies because of
18 what with we do with staffs who are in the
19 hundreds and, therefore, we cannot compete
20 equally when it comes to fulfilling necessarily
21 certain job requirements having to do with the
22 projects that we do.

23 We realize we're specialized because of
24 the field that we're in; however, if we could
25 participate, or at least compete against

1 companies that are in some way the same size and
2 revenue, it would greatly help us getting work
3 with the federal government. Thank you.

4 MS. HEAL: You're welcome.

5 MS. MANN: Did anyone have any questions?

6 MS. HEAL: So, you're in favor of
7 converting it to number of employees?

8 MS. EDWARDS: Yes, we are. Very much in
9 favor, so very much in favor.

10 MS. MANN: I have one question. I am sure
11 everyone's familiar, but let me give you the
12 background of why we're here today. SBA issued
13 a proposed rule, it was last year, to change the
14 receipt -- most of the receipts based size
15 standard to employee based size standards.

16 We withdrew the proposed rule. We issued
17 the Advance Notice of Proposed Rule Making, and
18 now we're in the information gathering stage.
19 Did you take a look at that proposed rule for
20 your size standards?

21 MS. EDWARDS: I haven't.

22 MS. MANN: So you don't know what the
23 employee number was we had assigned?

24 MS. EDWARDS: Before, but --

25 MS. MANN: Because like right now you're

1 receipts based, you don't remember what we had
2 proposed in that proposed rule for your
3 industry?

4 MS EDWARDS: That I don't have in front of
5 me.

6 MS. MANN: I was just curious if you knew
7 about that and that number. Okay. Thank you.

8 MS. EDWARDS: Thank you.

9 MS. MANN: Next, I have Buck Ozment.

10 MR. OZMENT: Good morning. My name is
11 Buck Ozment, that's spelled O-Z-M-E-N-T. I'm
12 here to represent Dynetics Incorporated. It's
13 an employee-owned small business in Huntsville,
14 Alabama. We're primarily a department of
15 defense contractor. And we're involved in
16 research and development of weapons and
17 electronic systems, primarily missile systems.
18 We therefore fall under NAICS code 541710 with a
19 size standard of 1,000 employees.

20 Currently we have 940 something plus
21 employees, so size standard rules are near and
22 dear to our heart right now. I am also here as
23 part of the larger Huntsville, Alabama, high
24 technology services community which has, in the
25 past, had a large number of companies that

1 perform the same types of functions we have.

2 There is some underlying problems that have
3 occurred now because of size standards and
4 affecting that industry.

5 We all know that our nation is at war and
6 so the Defense Department in particular has
7 reduced their support staff, especially in
8 procurement and contracts, and so we have larger
9 contracts being let which have more stringent
10 requirements for small businesses to meet.

11 One of the other people testified, talked
12 about, the fact that it's hard to compete when
13 you have larger and -- or smaller staffs and
14 compete against larger companies.

15 On Mrs. Fowler, very properly I think,
16 discussed the purpose of SBA and I started, when
17 I looked at the testimony here, I started
18 looking at your website, and I finally found
19 what I consider to be the excellent definition
20 of what a small business concern is supposed to
21 be, one that's independently operated and not
22 dominant in its field. That's fairly simple,
23 except it's sort of hard to judge in certain
24 areas.

25 So, far as independent operation, what's

1 happened in our community, and we see this
2 across the nation, is that small businesses that
3 are approaching or exceed their need size
4 standards, simply sell their companies to larger
5 businesses. They don't have the ability to
6 enter what you all call in the proposed rule
7 that dead zone or limbo zone and compete against
8 Boeings and Northrop Grummans, and things of
9 that nature, companies of that nature.

10 So, that means our marketplace appears to
11 be forming into two major groups the small,
12 small business and the large, large businesses
13 with nothing in between.

14 Just as an anecdotal evidence of that
15 concern, in the five years -- previous five
16 years there have been seven Huntsville-based
17 professional services, small businesses, that
18 have neared or outgrown their NAICS size
19 standard.

20 Only two of those companies remain as
21 separate companies today. I'm sorry. There are
22 nine companies, and only two of them remain as
23 small businesses. The remaining seven were
24 sold. There are currently three to four others
25 in the process of being sold or merged with

1 larger companies.

2 Well, what's the effect here? The bottom
3 line is the government has a reduced overall
4 contractor base to provide innovation and
5 support, and you have fewer customers, less --
6 fewer contractors, less competition, people tend
7 to fall into niche areas.

8 To the contrary, our company represents a
9 voice for organic growth. We are
10 employee-owned, as I mentioned, so we aren't
11 interested in selling out. We plan to grow
12 through our size standard, go through and
13 compete against large businesses.

14 However, that leads to our second concern.
15 Independent operations is first concern. The
16 second concern is dominance in the field of
17 operation. The DOD has a website that I have
18 cited in my written testimony which shows
19 research, development, test and evaluation
20 funding by the Department of Defense. This is
21 roughly 32-and-a-half billion dollars a year.

22 The top 100 companies in the nation
23 receive 86 percent of that 32-and-a-half billion
24 dollars.

25 In addition to that, the top 15 of that

1 top 100 have an average size of over 68,000
2 employees, and they received over 80 percent of
3 the awards, top 15 received over 80 percent.
4 The remaining top 100 companies received only 20
5 percent of the awards.

6 The highest ranking small business under
7 current definitions in that top 100 list was
8 number 45, again, number 15 and above.

9 MS. MANN: I'm going to need you to start
10 concluding and talking more about the size.

11 MR. OZMENT: Okay. The top four companies
12 won 15 percent of the awards, they are clearly
13 dominant. That meets the SBA's requirement.

14 Another company had 1.2 percent of the
15 award, that's probably not dominant. That is
16 six times larger than our company, which was the
17 largest small business. So, what we're saying
18 here is dominance, the criteria of dominance is
19 not currently being considered adequately in
20 setting size standards. In today's world, we
21 are in a data rich environment, you can go out
22 and determine the size standards, where the
23 sizes, where companies become dominant in their
24 industry. We recommend that you reexamine the
25 size standards, and here's a flash of the

1 obvious, we're recommending that you consider
2 increasing the size standards as opposed to
3 decreasing.

4 We also, in light of your proposed rule,
5 we recommend a separate set of size standards
6 for companies doing work for the federal
7 government, Because that obviously makes a
8 difference. I have been very pleased to hear
9 the other companies discuss it this morning.
10 Thank you very much for your time.

11 MS. MANN: Okay.

12 MR. OZMENT: Any questions?

13 MR. MORAN: Yes. You mentioned that the
14 size standard for your industry was 1,000
15 employees?

16 MR. OZMENT: Correct.

17 MR. MORAN: And you told us about the
18 number of employees that you have. You didn't
19 recommend to us in terms of what you would see
20 as -- you mentioned that nothing in the middle
21 you said increase, but at what percentage or
22 what number? Do you have a number --

23 MR. OZMENT: Well --

24 MR. MORAN: -- that's reasonable?

25 MR. OZMENT: I don't want to sound too

1 quirky about this, but SBA has an entire office
2 set up to determine the proper size and there
3 is, as I say, it's a data rich environment. You
4 can go out and find all the information you need
5 to determine what a proper size standard might
6 be. If the top four that control 50 percent
7 have an average of 68,000, I think it's probably
8 greater than 1,000, but I would hesitate to
9 guess of what it should be exactly.

10 MR. MORAN: All right.

11 MS. HEAL: I was also going to -- quick
12 question. Are you recommending that we define
13 dominance better, is that what I am gathering?

14 MR. OZMENT: No, I think dominance is
15 fairly apparent here. If you have four
16 companies dominating 50 percent of the industry,
17 they are dominant.

18 MS. HEAL: Right.

19 MR. OZMENT: I don't know if a company --
20 if a company has 10 percent of the industry is
21 that dominant. I would suggest it probably
22 still is. Five percent, marginal. One percent,
23 probably not dominant.

24 MS. MANN: I had sort of a -- just a
25 clarifying comment. Two things mentioned,

1 independently owned and that's addressed in our
2 affiliation regulations and the dominance. The
3 size office always looks at dominance when
4 creating size standards. If you're advocating
5 specific change and a specific size standard,
6 you know, in the regulations, we specifically
7 lay out how to do that with a petition. And
8 that would provide you the data and so, you
9 know, I just wanted to explain that to you.

10 MR. OZMENT: I should have said I am using
11 that as an example because, again, there is data
12 in a number of the NAICS codes that are
13 available, again I am focusing on federal
14 government business, and in my particular area
15 DOD business. But there are a number of NAICS
16 codes where there is sufficient data to do a
17 detailed analysis.

18 MS. MANN: Because there are so many NAICS
19 codes, that's why the regulations are written
20 that you petition us. If you petition us and
21 tell us why you think there should be a change,
22 then the office takes that and we do the
23 research on it. I am telling you aside from the
24 hearings, it might be something you'd be
25 interested in doing as well.

1 MR. OZMENT: Thank you. By the way, you
2 have one of my competitors speaking later. I'll
3 see whether she backs us up or not.

4 MR. SMITHFIELD: We already had a copy of
5 that and a disk.

6 MS. MANN: Winston Peak.

7 MR. PEAK: Yes, ma'am, I am here. Good
8 morning, I am Winston Peak. I represent
9 Alliance Suppliers, Inc., a small minority
10 company. We've been in business -- well,
11 personally been in business for -- since 1982.
12 Back in 1997 put together a group when most
13 companies were saying that they wanted to do
14 more Wal-Mart type shopping and decided that
15 maybe we should try to come together -- try to
16 bring a few businesses together so that we can
17 more compete with the large companies.

18 That we found was somewhat difficult
19 because everybody wants to be president and so
20 it makes it difficult. Anyhow, I was asked to
21 come here today and I didn't make a written
22 presentation really because I have had some
23 experience as a business person -- small
24 business person, dealing in the business world
25 and I got some information on SBA. May I ask,

1 the people sitting at this table here represents
2 SBA?

3 MS. MANN: Yes.

4 MR. PEAK: I was somewhat taken -- I
5 thought the SBA would represent the name SBA,
6 Small Business Administration, but when you look
7 under definition, the government definition of
8 small business, you're talking about 500 people,
9 which I consider to be a large company, 500
10 people considering most of the company with some
11 wealth are even downsizing today, so you're
12 finding size standards become somewhat more --
13 something that you need to take a look at.

14 You may want to consider medium size
15 business or large business and small business,
16 okay, but if you want to keep it simple, maybe
17 what we should consider is size with smaller
18 companies, because when you look at the higher
19 percentage of business in this country are small
20 businesses, and if you really take a good
21 cross-section, you're going to find that most of
22 the small business have less than 100 workers,
23 and you even take it down to a smaller
24 denominator, you're going to find that it's more
25 like 25, 30, 40, 50 people, something like that,

1 basically.

2 I have tried to compete for government
3 business for several years and to the point
4 where I sometimes just get frustrated because
5 the government business takes a lot of time.
6 It's a lot of paperwork. It's a lot of time.
7 You've got to read through a lot of garbage in
8 order to find, you know -- and so it's a very
9 competitive situation, okay?

10 And for a small company, we do not have
11 the resources, we do not have the financial
12 resources, the people resource in order to spend
13 a lot of time working these supposedly contracts
14 and not paying attention to how you pay the
15 bills at the end of the month and, you know,
16 most of the time these contracts, you're not
17 successful.

18 And so we find that, we think that you
19 should seriously consider the standards whereby
20 creating small business based on what the
21 percentage of small business are showing in this
22 country in terms of 100 people or less.

23 If you want to put it to a 100 people,
24 that's fine, but 500 people take it into another
25 realm where it makes it even more difficult for

1 us to compete.

2 And I have oftentimes tried to do bids and
3 when I call a money voucher that I have been
4 working with over the years and they said to me,
5 well, we are quoting it, so we'll not give you a
6 price, right? Where do you go from there?

7 You really can go nowhere because -- and
8 sometime they offer to give you a price, but you
9 know there you're not going to make it because
10 they are quoting it, they are wanting the
11 business, they have a dedicated person in-house
12 that are working these things day after day and
13 so did they give you a price that they are
14 actually quoting to the government, and so
15 therefore you don't have a chance of making a
16 profit doing whatever you're doing.

17 Now, I also heard talk about tiering,
18 second tier situations, and I don't think second
19 tiering works. I remember years ago when the
20 concept of second tier started. I think it was
21 maybe started with Chrysler Corporation, and
22 matter of fact, someone I knew very well was
23 actually the person that actually initiated that
24 concept, and I never was for it because when you
25 do second tiering, I find that you're still

1 confining the wealth, you're confining the
2 situation to where sometimes, in my situation,
3 for example, I find I compete with companies,
4 like most of you may be familiar with, Granger
5 Corporation, and they may classify themselves as
6 large or small because they have several
7 different, and they try to identify each
8 operation as a business so they sometime, I
9 don't know how they classify in your --

10 MS. HEAL: They would be probably large in
11 everything, so --

12 MR. PEAK: Okay. So, but what I am
13 driving at is when I talk to major contractors,
14 prime contractor, then what they say to us is,
15 okay, then we are doing an integrated supply
16 business and we are putting the emphasis on the
17 person that we sign a contract with.

18 MS. MANN: Mr. Peak --

19 MR. PEAK: -- to do business with you.

20 MS. MANN: I'm sorry, I need you to start
21 concluding your testimony.

22 MR. PEAK: Thank you. So, therefore,
23 basically it doesn't work because they themselves
24 are quoting -- they can buy better than we can,
25 okay? And so, therefore, we are not able to

1 compete in an aggressive manner because we do
2 not have the resources. So, you know, I want to
3 impress upon the SBA group to stick with your
4 name, SBA, Small Business, and see if we can put
5 it in a position where smaller businesses can
6 compete more effectively and get some more of
7 the wealth.

8 MS. HEAL: I have a question. Mr. Peak,
9 your company, Alliance Supplier, I assume you
10 are a wholesale distributor?

11 MR. PEAK: Yes, ma'am.

12 MS. HEAL: And you keep talking about the
13 500 employee, because there isn't an
14 across-the-board 500 employee size standard.
15 It's by industry. But for wholesalers, there is
16 the nonmanufacture rule, which if you're not the
17 manufacturer the size standard is 500 employees.

18 MR. PEAK: If you're not the manufacturer?

19 MS. HEAL: Right. The size standard is
20 500 employees. And is that what you were
21 talking about? Because we're doing a separate
22 action on that nonmanufacture rule, aside from
23 this, from the size standards because each
24 industry has a different size standard. If
25 you're engineering services, it can be 4 million

1 dollars. If you're computer services, it could
2 be 21 million dollars. If you're a manufacturer
3 of avionics equipment, it's 750 employees. It
4 varies.

5 But there is this rule called, it's a
6 procurement rule, called the nonmanufacturer
7 rule, which we are doing a separate action on
8 because currently it's a 500 employee size
9 standard, and because of the proposed rule that
10 was withdrawn.

11 We received a lot of comments on the
12 nonmanufacturer rule to consider lowering it.
13 So, we're doing a study right now on that
14 separately and independently, and that will not
15 come out with the proposed rule that we're
16 having these hearings on right now.

17 But we do want your testimony on that.
18 And we thank you for that testimony. I just
19 wanted to let you know that we were working on
20 that separately.

21 MR. PEAK: When do you think that might
22 happen?

23 MS. HEAL: Well, like any proposed rule
24 after we get our proposed rule written, it has
25 to go through a bureaucracy through SBA and then

1 a bureaucracy at the Office of Management and
2 Budget.

3 MS. MANN: Set time limits, by regulation.
4 OMB, after it goes through SBA, and this is with
5 all Federal agencies after they do regulations,
6 after it goes through your agency it has to go
7 to the Office of Management and Budget.

8 Office of Management and Budget gets three
9 months, they get 90 days to review the rule,
10 they can either accept it or reject it, wherein
11 it gets sent back to the agency who then has to
12 make some changes. Send it back. They get
13 another 90 days.

14 Then it goes in the Federal Register as a
15 proposed rule. We get a comment period. We
16 assess the comments, draft the final rule. It
17 goes back to OMB. They get another 90 days.
18 Just so everyone gets an idea of what it's like
19 for the process of a proposed and final rule.

20 MR. PEAK: So it's possible it takes many
21 years?

22 MS. MANN: Well, it can be done much
23 quicker.

24 MR. PEAK: Okay. Fine. I appreciate that
25 information.

1 MS. HEAL: I just want to let you know
2 that we are working on that separately.

3 MR. PEAK: I am very happy to know that,
4 and I know your good faith, and I understand
5 that, you know, you have tasks but really
6 consider the small business for what they are:
7 small business. Thank you.

8 UNIDENTIFIED MALE SPEAKER: Can I ask a
9 question of what you just made a statement on?
10 The process you just went through, is that for
11 all the standards any time you make a change?

12 MS. MANN: Any time any agency makes a
13 regulation.

14 UNIDENTIFIED MALE SPEAKER: Just a
15 clarification, you indicated the engineering,
16 consulting engineering industry, that that size
17 standard for small business is 4 million
18 dollars?

19 MS. HEAL: Yes. And then there is two
20 exceptions to that. There is the general size
21 standard for engineering services is 4 million
22 then there is an exception for marine
23 engineering, which is 15 million, and there is
24 an exception for engineering services related to
25 aerospace and military weapon systems and that's

1 23 million.

2 UNIDENTIFIED MALE SPEAKER: Are you
3 talking about small or small disadvantaged
4 businesses?

5 MS. HEAL: In order to be an SBA you have
6 to be a small business.

7 MS. MANN: At the break, if you have any
8 questions like that, if you could, come up and
9 ask them.

10 MR. EDMOND: Good morning everyone. I'm
11 Duane Edmond. D-U-A-N-E, E-D-M-O-N-D. My
12 company is called RCR Technology, it's an IT
13 Consulting Company. First, I want to ask a
14 question, I want to make sure I have the correct
15 understanding. Small Business Administration is
16 supposed to set aside about, what, 20 percent of
17 Federal contracts?

18 MS. MANN: Actually, we don't do the
19 set-asides, because we're not the procuring
20 agencies. It's the other agencies by statute.
21 They have goals they have to meet, and that's
22 how it works. So DOD has a goal, a statutory
23 goal for small businesses, as well as the
24 subcategories.

25 MR. EDMOND: You just kind of maintain,

1 manage that?

2 MS. MANN: We're trying to enforce that is
3 what we try to do.

4 MR. EDMOND: Okay. Here's our concern.
5 We try and win bids for the federal government.
6 Our company is not -- we're a minority-owned
7 company. We have the experience. We have the
8 qualifications. We have put in approximately
9 about 10 years of experience and knowhow.

10 We get the bids and we start to work on
11 them. We go to the prequalification meetings
12 and everything like that, and we look right and
13 they inform us we've got a good chance. They
14 see our records and we present everything like
15 we should win, and then they kind of give us the
16 impression that that's what we'll do.

17 But we don't win them for whatever reason,
18 we're not winning them. We know we have what it
19 takes, but we're not winning enough of the bids.
20 And that's our main concern and problem.

21 I'll be honest with you, I don't know
22 exactly all who's winning them. I do know some
23 of them, obviously, are larger companies. But
24 I'm not going to try and justify -- you know,
25 but I do know that that has been taking place.

1 I was hoping my partner would kind of verify it
2 with more specifics, but let's move on with what
3 I can share.

4 In going through the bidding process we
5 are putting -- for the nice size contract that
6 we feel we can do, we're putting about 400
7 hours, man-hours, into trying to get this
8 established, and trying to win the bid and even
9 for the smaller ones it's about at least 100
10 hours.

11 So, we're just putting in a lot of time
12 and going through the process, and it's just not
13 happening is the bottom line for us. And that
14 is really our main concern is if it's something
15 that is set aside, we would like to see more of
16 this kind of fall to companies of our size and,
17 you know, we'll basically be justified because
18 we feel that we definitely have the
19 qualifications.

20 MS. MANN: Did anyone have any questions?

21 MS. HEAL: No.

22 MS. MANN: I want to understand your
23 testimony more. You're competing in an open
24 competition, or are you competing on set-asides
25 and you're losing to larger small businesses, or

1 are you losing to large businesses?

2 MR. EDMOND: We are doing both. We're
3 trying to do both, set-asides with a set-aside
4 disability company that we've been trying to
5 work with. Nothing has panned out yet. And
6 just the open bids generally that's out there
7 from the federal government, and so we're trying
8 to do all of them.

9 MS. MANN: So, are you finding problems in
10 competing with, this is in the set-asides,
11 competing with larger small business, is that
12 one of the problems?

13 MR. EDMOND: Yes.

14 MS. MANN: And your company, what
15 industry is --

16 MR. EDMOND: IT consulting. IT field.

17 MS. MANN: Okay.

18 MS. FOWLER: How many employees do you
19 have?

20 MR. EDMOND: Yes, we have up to about 70.

21 MS. FOWLER: 70 employees?

22 MR. EDMOND: Yes.

23 MS. FOWLER: And you have been in business
24 10 years?

25 MR. EDMOND: Yes it's about 10 years. And

1 then, you know, again, like I say, on the other
2 side, one of the persons that spoke before, I
3 mean, we want to be a large company, too, one
4 day.

5 So, we do want to maintain and manage that
6 as well because, say, for example, we do win one
7 of these big contracts, we probably are going to
8 be considered a large size company, so we do
9 want to feel like both sides are being monitored
10 as well because small companies do grow and we
11 do want to grow to be a larger company.

12 So, but then at the same time, if we do
13 win the contract and the IT field, the contracts
14 last maybe a year, maybe two, it could fall off,
15 or then we could get picked up and then we'll be
16 back as a small company again; so, we kind of
17 need to have that as monitored as well. And we
18 want it to be fair as well.

19 MR. MORAN: So you're having problems both
20 in restricted and unrestricted areas?

21 MR. EDMOND: Correct.

22 MS. FOWLER: So, would your recommendation
23 be that the size standards remain the same, get
24 smaller? What would you like on this particular
25 issue? That's what we're interested in right

1 now.

2 MR. EDMOND: To my knowledge, isn't the
3 size up to -- it went up to 500? Is that
4 correct for small?

5 MS. HEAL: No.

6 MR. EDMOND: Okay.

7 MS. MANN: One of the proposals, because
8 you're a receipts-based industry, was to change
9 all the receipts-based to employee-based. And a
10 lot of people support that, but a lot of people
11 also had concerns about it as well.

12 I mean, would that help a small business
13 compete against larger small businesses, or --
14 any opinions on that?

15 MR. EDMOND: Well, I personally wouldn't
16 know except I would probably lean towards the
17 number-based. I would probably lean towards
18 that. I think our company would be probably be
19 better recognized if we were considered by the
20 number.

21 MS. MANN: Okay. Thank you.

22 MS. HEAL: Thank you. Stanley King.

23 MR. KING: Good morning. Again, I applaud
24 all of you for taking the time and the interest
25 to reach out to the public for our comments. My

1 name is Stanley L. King, and the name of my firm
2 is -- King is a pretty easy name to remember
3 around here -- S. L. King and Associates. And I
4 am also on the Regional for Ombudsman Committee
5 for the SBA. Just want to make note of that.
6 And I appreciate the opportunity to serve.

7 Today I just want to address the size
8 standards, but I have tailored my comments based
9 on some comments that you made earlier because
10 as a consulting engineering firm, as you
11 indicated the size limits is based on revenues.
12 And as a consulting engineering firm, we've
13 grown at a fairly rapid rate over the past 10
14 years, we're up to about almost 80 people but
15 we're growing rapidly but we're
16 undercapitalized.

17 And I think the threshold of 4 million
18 dollars is much too low considering the cost of
19 being in business these days, the cost of
20 running a business, the salary structures. We
21 have to be very competitive. We're a people
22 business, and you compete with major firms who
23 are able to offer higher salaries, better
24 benefits, and so that threshold, to me, is a
25 little low.

1 But my comments, though, was to address
2 the size standard of 100 versus 500, my initial
3 comments were oriented towards those size
4 numbers.

5 MS. MANN: That's what we want to hear.

6 MR. KING: Okay. First of all, I'd just
7 like to tell you it's my opinion that we need to
8 eliminate the loopholes that allow large
9 companies to disguise themselves as small
10 businesses. Therefore, I do not feel that the
11 11 items in your current proposal really address
12 the fact that the vast majority of those federal
13 small business contracting dollars are going to
14 large businesses.

15 And to help remove the 1,000 firms and
16 other large businesses from federal small
17 business contracting proposal programs, I'd like
18 to propose several things. I know my time is
19 limited, so I'm going to be selective. I'm
20 going to get right back to size standards.

21 So, I think either we return back to the
22 definition of small business, which is 100
23 employees, or reach a compromise between 100 and
24 500. And my recommendation is to stretch that
25 definition to 250 employees. 98 percent of all

1 small businesses are less than 100 people, and
2 about 80-some percent are less than that. I
3 think 12. So we're looking at this category of
4 100, 500.

5 500 people is really a large business.
6 It's a large business. And even though, you
7 know, I favor somewhere between, I would
8 subscribe to a 100 number as a definition for a
9 small business.

10 Addressing some of your 11 items that you
11 have. I'd like to just go down through those
12 quickly.

13 MS. HEAL: Sure. That would be great.

14 MR. KING: First question you asked, are
15 the current size standards difficult to
16 understand? No, I don't think so. I do not. I
17 think the size standards are not difficult.
18 However, larger issues are the SBA's lack of
19 enforcement of laws requiring punishment of
20 firms for misrepresenting their small
21 businesses. Okay. Second --

22 MS. MANN: You're talking about
23 misrepresenting on a contract?

24 MR. KING: Misrepresenting size standards
25 status.

1 MS. MANN: On a contract, or on what?

2 MR. KING: Just in general. In general.

3 2: What are alternatives to current methods of
4 calculating employment size and business? Both
5 full and part-time employees should be used in
6 calculating employment size. We agree with
7 using full-time employees to calculate the
8 number of employees over the preceding 12
9 months.

10 MS. HEAL: Okay. So, no change in that.

11 MR. KING: 3: Should the SBA continue to
12 use receipts-based size standards or establish
13 size standards based on exclusively number of
14 employees?

15 Size standards should be based on number
16 of employees. Receipt-based size standard
17 should be eliminated.

18 Should the current process for applying
19 size standards on federal procurements be
20 modified?

21 No, we do not support -- I do not support
22 establishing separate size standards for federal
23 procurement. This will further complicate using
24 size standards.

25 Should a separate size set of size

1 standards be established specifically for
2 federal procurement.

3 This would needlessly complicate size
4 standards.

5 Should the SBA establish a tiered system
6 of size standards?

7 No. Adding a tiered system would just
8 complicate the size standards structure. It
9 will also further limit opportunities for small
10 businesses. Small business will only be able to
11 compete for opportunities within a smaller range
12 of the classification.

13 What are the ways to clarify the SBA's
14 affiliation regulations?

15 We agree with SBA's current affiliation
16 regulation. Obviously, you've heard these
17 comments before, so I am supporting them.

18 MS. MANN: You know, it was a year ago,
19 but we rewrote the affiliation regulations
20 making changes about a year ago.

21 MR. KING: I need to update myself.
22 Okay. We're against allowing exemptions for
23 franchises.

24 MS. HEAL: The only exemption we were
25 going for was the temporary staffing.

1 MR. KING: Okay.

2 MS. HEAL: That was the only thing that we
3 talked about in our Advance Notice.

4 MR. KING: Okay. Okay. Should the SBA
5 continue using its joint venture eligibility
6 criteria?

7 Yes, we agree with their policy for doing
8 that.

9 What are the approaches the SBA could take
10 to grandfather small business that may be
11 adversely impacted by any future?

12 Grandfathering should not be allowed. I
13 think it's unfair to small businesses, continue
14 allowing large business to take advantage of
15 that status on an ongoing basis when they are
16 really large businesses.

17 What is the possible impact on federal
18 agency if size standards are changed?

19 I don't think they'll be adversely
20 impacted.

21 And the last: Should SBA provide
22 exclusion from affiliation for venture capital
23 companies in size determinations for
24 eligibility?

25 Now, it's my opinion that no exclusion

1 should be allowed. I think that it allows an
2 opportunity for unfair competition if it is.
3 Those are my comments. Thank you.

4 MS. HEAL: When you were talking about the
5 500 employees, you were talking again about the
6 nonmanufacturer rule, I assume?

7 MR. KING: Right.

8 MS. HEAL: And I just want you to clear
9 something up. First, you said you were
10 recommending 250 employees, and then you said
11 100 employees. Could you explain a little
12 better?

13 MS. MANN: He was compromising.

14 MS. HEAL: Oh.

15 MR. KING: I said it's a compromise.

16 MS. HEAL: Okay. All right. You
17 recommend 100 employees?

18 MR. KING: For the benefit of the whole,
19 you know, I think I'd compromise, but I'd say
20 250 is a better, more realistic number. That's
21 just my opinion.

22 MS. HEAL: That would be more towards the
23 wholesalers?

24 MR. KING: Right.

25 MS. HEAL: They are the companies that

1 usually get hit with the nonmanufacturer rule.

2 MR. KING: Okay. Thank you.

3 MS. HEAL: You're welcome. Thank you.

4 MS. MANN: Mary Griffith.

5 MS. GRIFFITH: I'm Mary Griffith,
6 G-R-I-F-F-I-T-H. And I am the chief procurement
7 officer with Analytical Services Incorporated.
8 It's a Huntsville Alabama, woman-owned, small
9 disadvantaged business, and we're a management
10 and technical services company supporting DOD
11 and NASA. Thanks for the opportunity to comment
12 on the Advance Notice.

13 ASI's in agreement that employee size,
14 based on full-time equivalent, is the way to go.
15 It's a more accurate reflection of the size of a
16 business, full-time equivalent. A calculation
17 could be easily made by small businesses by
18 taking the total number of hours that are worked
19 divided by 1920. The federal government
20 generally kind of recognizes 1920 as the amount
21 less vacation and holiday.

22 To aid also in simplifying, we also
23 believe that average employment should be based
24 upon a time period in accordance with the
25 revenue base. As you know, currently, revenue

1 base is the last three completed fiscal years,
2 but the size standards based on number of
3 employee is a rolling average over the last 12
4 months.

5 Once a company gets close to that number
6 of employees, that rolling average, it requires
7 them to perform the calculation after completion
8 of each pay period. And so in contrast, the
9 current revenue calculation is done once a year.

10 So, if you want to simplify things, for
11 small business make it the same, the average
12 over the last so many years, what, three years
13 is probably good.

14 Current market conditions in the federal
15 marketplace, especially in NAICS Codes 54, which
16 is scientific and professional services,
17 necessitated change from receipts-based to
18 employee-based.

19 Federal omnibus type contracts requiring a
20 prime contractor to manage a large team of
21 subcontractors, or information technology
22 companies requiring a prime contractor to
23 integrate hardware and software and services,
24 artificially inflate a company's revenue. So,
25 size based on number of employees is a better

1 indication of the size of a company.

2 In addition, I believe it is in the best
3 interest of small businesses for SBA to consider
4 a separate set of size standards for federal
5 procurements.

6 Current size standards do not reflect the
7 changes that have happened in the federal
8 marketplace in the last 10 years. We've seen
9 contract bundling, which has resulted in larger,
10 much larger, federal contracts with very, very
11 broader scopes.

12 We have seen now federal procurements that
13 combine government locations across the U.S, and
14 sometimes, even overseas, especially in the IT
15 industry.

16 Federal contract performance periods,
17 contracts are now being let for 10 years, or
18 with GSA schedules, even longer. And omnibus
19 type contracts, as I mentioned before, are
20 requiring a prime contractor, even a small
21 business prime contractor, to manage a large
22 team of subcontractors. So a different set of
23 size standards for federal procurement may be
24 something to look at.

25 I believe that the current information

1 that's available in CCR, the Central Contractor
2 Registration, can provide what the threshold
3 should be.

4 Now, with a new requirement in 2004 for
5 the online reps and certs, the ORCA requirement,
6 that requires us to go in once a year and enter
7 in information, you have the ability to look at,
8 for each NAICS code, you know, what the
9 employment is, what the revenues are, and what
10 the NAICS code is. We're required to report
11 that.

12 So you could easily figure out, I believe,
13 what the distribution should be and what should
14 a small business be. That could aid you.

15 We support the use of a tiered sized
16 standard structure. Today a wide gap exists
17 between large and small businesses.

18 As one of my colleagues, I don't know, one
19 of the people in Huntsville, mentioned mergers
20 and acquisitions have resulted in making the big
21 federal contractors huge, and there is a wide
22 gap. I actually cited some other information
23 from Washington Technology Magazine. 100
24 companies are major players in IT command 70
25 percent of all the federal IT budget, or the top

1 20 control 51 percent. I have already talked
2 about contract bundling. It has changed it
3 dramatically.

4 I do encourage SBA when we look at,
5 "should we have a separate size standard for
6 federal contracts", I encourage SBA to review
7 the minimum size that a federal contractor who
8 possesses the following would be, a top secret
9 security clearance that you must have to play in
10 the DOD environment right now; a defense
11 contract audit agency, DCAA, approved accounting
12 system; as well as an estimating system that
13 you've got to have to compete with the big boys;
14 a defense contract management agency, DCMA,
15 approved property management system; And an
16 approved purchasing system that you need to have
17 in place to compete with the big boys.

18 I am confident that SBA's review will
19 reveal that the current level of small business
20 thresholds are requiring small businesses to
21 compete with the corporate giants in many cases
22 before they are mature enough to compete with
23 those, so I think the gap is too large between
24 large and small. We need to raise the
25 threshold.

1 As a single voice for many mature high
2 technology small businesses across the U.S., I
3 urge you to review my comments, and we
4 appreciate your attention and your interest in
5 making it simpler and helping the small business
6 community. Any questions?

7 MS. MANN: I had a question. I'm not sure
8 I understand the point you're making about
9 looking at the fact that you have to have the
10 DCAA audit, and are you saying that there should
11 be for contractors or small business that have
12 to meet all those requirements, you said there
13 should be a different size standard, or -- I'm
14 not sure I understand. Is that support that for
15 federal procurement there should be a size
16 standard for that, as opposed to like the other
17 programs?

18 MS. GRIFFITH: For federal procurement --
19 let me give you a good example. An IT contract,
20 a company, 21 million is the threshold, let's
21 say. And recently there was a procurement that
22 we were interested in, a 75 million dollar
23 procurement. 21 million is the threshold. We
24 didn't qualify, but that's okay.

25 In the evaluation factors that the

1 government uses to evaluate those proposals,
2 whether it comes from a small business or a
3 large business, they are going to look at
4 infrastructure, they are going to look at
5 management, they are going to look at, do you
6 have an approved, a DCAA approved, accounting
7 system. A purchasing system, the bar
8 requirement is that the federal government
9 generally does not even come in and audit a
10 federal government contractor until they reach
11 25 million in sales for a purchasing system
12 review.

13 So, then, when you have small business
14 competing with the large giants on an IT, on
15 engineering services for 23 million, and you do
16 an evaluation of management, you know what I am
17 saying? They are going to do -- or the small
18 businesses don't have those in place yet because
19 they haven't grown to the threshold to have
20 those in place. So, some of the size thresholds
21 actually kind of need to go up to reflect that
22 when a company graduates, they can compete with
23 the guys, they have met. They are over 25
24 million in sales.

25 I am a company who is 24.7 -- my average

1 is 24.7 million, and I haven't even been called
2 up for my purchasing audit yet. So a company
3 has to grow in federal procurement to a certain
4 size to even get an approved system.

5 MS. MANN: And you think converting to an
6 employee-based size standards would help and
7 take care of all that?

8 MS. GRIFFITH: Yes. Yes.

9 MS. HEAL: I have one quick question
10 regarding the full-time equivalency. I know one
11 thing we had put in the Advance Notice is any
12 way to verify employment. That was another
13 thing we were looking for. How could we verify
14 the numbers that you would have given us?

15 MS. MANN: Right. See, with the
16 receipts-based, we ask for your income tax
17 records. With an employee-based, we go by your
18 payroll records and other information you
19 provide us. So --

20 MS. HEAL: That's a concern on how could
21 we verify the numbers you were giving us.

22 MS. GRIFFITH: I think that would come out
23 of most accounting systems though the number of
24 worked hours that an employee would work. I
25 would think that would be pretty easy.

1 MS. HEAL: Because that's what we were
2 looking for, some way of verifying the
3 information was correct that we were getting.

4 MS. GRIFFITH: I found it interesting, and
5 I won't take your time but you talked about
6 actually using what you submit for your tax
7 information.

8 MS. HEAL: Right.

9 MS. GRIFFITH: Have you ever thought about
10 a company whose fiscal year ends in December but
11 you don't submit taxes?

12 MS. HEAL: Oh, we have that. We have that
13 in the rules.

14 MS. MANN: We have that in the regs.
15 We've had that happen.

16 MS. GRIFFITH: I am sure you have people
17 say I haven't submitted my tax records yet, I
18 don't have that revenue. Thank you.

19 MS. HEAL: You're welcome. Thank you.

20 MS. MANN: Next I have Phillip Wharton.

21 MR. WHARTON: Good morning. I actually go
22 by "Les" which is my middle name, so it's Les
23 L-E-S. Wharton, W-H-A-R-T-O-N. And I am with
24 Spherion Corporation. S-P-H-E-R-I-O-N,
25 Corporation. Based in Ft. Lauderdale, Florida.

1 We're a staffing franchisor. Our franchise
2 group is based here in Atlanta.

3 I am here today to comment on possible
4 changes to the affiliation rules to exempt from
5 consideration certain standard franchising
6 practices in the temporary staffing industry. I
7 thank you for the opportunity to offer comments.

8 I have extensive experience in both the
9 staffing industry and in franchising. I have
10 been involved in both since 1981. I am vice
11 chair of the Legal Legislative Committee of the
12 IFA, which is the International Franchise
13 Association. And I chair the Legal Legislative
14 Committee of the American Staffing Association,
15 which is ASA. I'm not here to represent the
16 views of either of those organizations; rather
17 I'm here to represent my own comments and those
18 of Spherion and our franchisees.

19 I guess the basic net of my comments would
20 be that I think that staffing franchises should
21 be treated like other franchises. And I'll
22 explain that in more detail.

23 In your rule-making notice, you've asked
24 whether the practices within the staffing
25 industry, the franchisor being the employer of

1 the individuals placed as temporary workers by a
2 franchisee, the franchisor being responsible for
3 the franchisee's payroll and associated costs,
4 the franchisor collecting the franchisee's
5 accounts receivable, and the franchisor
6 remitting client fees to their franchisee should
7 be exempted from consideration in a
8 determination of affiliation.

9 Beginning with the Danny case almost 15
10 years ago, we've disagreed with the SBA's
11 interpretation of the affiliation rules to deem
12 these practices to be determinative indicia of
13 affiliation with a staffing company franchisor.

14 Accordingly, I believe it's entirely
15 appropriate to exempt these. I'll not spend
16 time today laying out our view on the error of
17 the current interpretation because that can be
18 found in the Danny case, as well as the recent
19 cases, the Garvin case.

20 Instead, I am going to focus on the
21 specific questions you've asked in your notice
22 of rule making. Of course, I'll be happy to
23 answer any questions you might have. You asked
24 for our thoughts on four questions. First: Do
25 the SBA's current franchise regulations hamper

1 the ability of franchisees to compete in the
2 temporary staffing industry?

3 Second: Would allowing this exemption
4 continue to allow for temporary staffing
5 franchisees to be independently owned and
6 operated businesses?

7 Third: Does allowing this exemption give
8 franchisors too much control over their
9 franchisees?

10 And fourth: Would allowing this exemption
11 give franchisors and franchisees a competitive
12 advantage in contracting over independent
13 temporary staffing businesses?

14 Do the SBA's current franchise regulations
15 hamper the ability of franchisees to compete?
16 Yes, as you currently interpret them. Staffing
17 franchisees, independent businesses with the
18 risks and the opportunities for reward for their
19 efforts, are currently unable to qualify for the
20 loan programs and preference programs that are
21 available to their competitors who are the same
22 size and have the same financial wherewithal
23 that these franchisees have.

24 Our franchisees, with very few exemptions,
25 are mom-and-pop operations which have bet their

1 life savings on success. As in other franchise
2 systems, they have gotten from us a name and a
3 business system, but the capital is theirs, the
4 risk is theirs, the reward is theirs.

5 Would allowing this exemption continue to
6 allow for temporary staffing franchisees enough
7 to be independently owned and operated
8 businesses? Yes, just as they are now
9 independently owned and operated.

10 This would only change the analysis so
11 that the small franchisees would be considered
12 small business, within the meaning of the SBA
13 rules.

14 Does allowing this exemption give
15 franchisors too much control over their
16 franchisees? No. The day-to-day operating
17 decisions that go to the success or failure,
18 which are made by any small business owner,
19 marketing strategy, client decisions, hiring and
20 firing of staff, which expenses to incur, which
21 to defer, which to avoid, all those decisions
22 are now and would continue to be made by our
23 franchisees.

24 I think you heard the testimony this
25 morning of David Black to that end, and he is an

1 Express Personnel franchisee here in Atlanta.

2 Would allowing this exemption give
3 franchisors and franchisees a competitive
4 advantage in contracting over independent
5 temporary staffing businesses?

6 No, the franchisees are small business,
7 assuming they meet the small size standards, and
8 they should be competing on that basis in the
9 marketplace. The fact that they may have a
10 system and a name from a larger entity, a
11 staffing franchisor, should not be given any
12 more weight in our industry than it's given in
13 the analysis of other franchise systems.

14 In summary, we believe the exemption that
15 you're considering is needed and would put our
16 franchisees on a level playing field as the
17 small businesses that they are, people risking
18 what is frequently their life savings capital on
19 a business concept in the marketplace.

20 I hope you find my comments to be useful
21 this morning, and thank you. And do you have
22 any questions?

23 MS. HEAL: I don't have any questions.

24 MS. MANN: No.

25 MS. HEAL: Thank you so much.

1 MR. WHARTON: Appreciate it.

2 MS. MANN: Sandra Adams.

3 MS. HEAL: I think she's gone.

4 MS. MANN: All right. Scott Lamb.

5 MR. LAMB: Good morning. I am Scott Lamb.

6 I am with the Hyatt Select Hotel Group. I am
7 here today as a representative of the Society of
8 Government Travel Professionals. Our
9 organization is a national nonprofit forum for
10 all components of the government travel market.

11 Many of our 500-plus members are small
12 business who activity participate in government
13 programs. The SBA size standards directly
14 affects our members' ability to bid and service
15 government business.

16 My company, although not a small business,
17 does have many small business owners that are
18 franchise hotel operators, and my comments
19 specifically reflect the lodging and travel
20 industry viewpoint on this issue.

21 First of all, we agree with SBA that the
22 size standards must be simple and easy to use.
23 We question the wisdom of changing the size
24 standard to an employee-based head count rather
25 than receipts.

1 Technology has impacted some companies in
2 the travel industry greatly affecting
3 productivity per employee. However, the impact
4 is not the same across the board for all types
5 of industry.

6 Travel agencies, for example, have greatly
7 increased productivity through electronic means
8 and electronic distribution.

9 Hotels pretty much operate the way they
10 did 100 years ago with the same number of people
11 required to clean the same number of rooms each
12 day.

13 So all parts of our industry aren't
14 changing at the same rate when it comes to this,
15 and we think that it's still a receipt basis is
16 a real key to making a level playing field.

17 In addition, it stops us doing extra and
18 double work to participate in this. We're
19 already doing receipt-based reporting for the
20 IRS, for your banks, for government contracting
21 offices; so, creating a secondary employee-based
22 standard would be more reporting than would have
23 to be done.

24 We don't feel unique size standards should
25 be set up for federal procurements. We feel

1 that one size fits all makes it more level.

2 We think that multiple NAICS contracts
3 shouldn't be allowed. The bundling results in
4 large common contractors dominating procurements
5 once set aside for small business.

6 And what they end up doing is fulfilling
7 their small business quotas with an unrelated
8 type of business. A travel agency gets bundled
9 out of a travel agency contract because it goes
10 to a Northrup or a Lockheed Martin, and then
11 Lockheed Martin doesn't get a small business
12 travel agency to fill that piece for their
13 requirement, they go find a janitorial firm and
14 the bundling ends up decreasing the competition
15 in our industry.

16 We feel direct contracting is many times
17 superior to subcontracting because the
18 subcontracting with the larger corporations, you
19 can't use that to maintain your presence on the
20 GSA schedules.

21 So, if you go on a GSA schedule and then
22 you go after procurements as a subcontractor or
23 a partner with another company, you don't get to
24 use that credit to maintain your status. You
25 have to have a certain dollar volume each year

1 with the government to stay on the schedules,
2 and if you can't show that because you're a
3 direct contractor, you are can't stay on the
4 schedule, you get kicked off and you have to
5 reapply and go through that whole process again.
6 So there is some issues there.

7 MS. MANN: I need you to stay back on the
8 size standard. I'm not sure how some of this --
9 we all know bundling, the schedule. If I give
10 you the opportunity to talk about it, everyone
11 here is going to want to talk about those
12 issues.

13 MR. LAMB: Okay. We do not feel that
14 tiered size standards would level the playing
15 field. We do feel that the affiliation
16 regulations need to be simplified and should
17 recognize that marketing agreements and other
18 temporary loose affiliations between companies
19 that companies routinely enter these days do not
20 constitute ownership or major revenue changes,
21 and therefore, should not count against the
22 company's ability to bid as a small business.

23 The joint venture eligibility regulations
24 need to be simplified to make them easier for
25 small businesses to bid. Eligibility should not

1 be grandfathered. A small business must qualify
2 today in order to bid and we agree with the
3 proposed participation of venture capital
4 comparisons. Thank you. Any questions?

5 MS. MANN: Any questions?

6 MS. HEAL: No.

7 MS. MANN: Okay. Thank you. And did you
8 have written testimony?

9 MR. LAMB: Got it already.

10 MS. MANN: Okay. Has Sandra Adams come
11 back in the room? All right. Next I have Erica
12 Nowak.

13 MS. NOWAK: My name is Erica Nowak. I
14 represent Micron Corporation in Franklin County,
15 Tennessee. Micron is located in the research
16 part of the University of Tennessee Aerospace
17 Institute. We are a very small research
18 company. We are presently in the stage of going
19 into production manufacturing of a product. I'm
20 not very much familiar with the size standards
21 for our industry, but I just thought I give you
22 a little bit of presentation of what our company
23 is about, and what our concerns are so that when
24 you do the decisions, you might have a picture
25 of a very small place.

1 As I said, I represent a very small
2 research and development community of about five
3 to ten people which has been helped in the past
4 by the SBA with a Small Business Innovative
5 Research Program, the SBIR.

6 This is an extremely competitive process.
7 For Phase I, which generally lasts about half a
8 year, we bid against hundreds of competitors for
9 a relatively small research contract. If we win
10 and the research is successful, we may be
11 invited to bid for Phase II, maybe against up to
12 10 competitors. And if we are selected and our
13 research and development is sponsored on a
14 larger scale, for about two years.

15 As I understand it, it is the vision of
16 our sponsors at the SBA that we reach Phase III.
17 In Phase III we will produce, manufacture and
18 market our product which has been developed
19 during the two preceding phases. Financially,
20 we are now on our own, but we are still in a
21 very, very vulnerable stage and still need the
22 protection and help which comes from the Small
23 Business Administration.

24 And that is the stage where size comes in.
25 As I said before, I represent a very, very small

1 company with a team of maybe five to 10 people.
2 Normally, you do not hear much from the small
3 ones since we just do not have the funds and
4 resources to be adequately represented.

5 In a small outfit like ours, everyone has
6 to wear many hats, so to speak, but this almost
7 never includes the hat of a lawyer or a
8 representative in Washington. Normally, we just
9 cannot afford the time and money to have our
10 voice heard.

11 For me, it's a privilege to be here today
12 and I really appreciate the opportunity to speak
13 to you, and thank you for your willingness to
14 listen to us through these hearings, but as a
15 company, we're one person short today and my
16 work has to wait when I am back, which is no
17 problem since it probably can be done at night
18 or on the weekend.

19 But if there were to be followup to this
20 event, it would be hard for me to do because
21 survival is a daily concern and it's hard to
22 concentrate on anything else than the work of
23 the day.

24 As I understand it, and that is just the
25 picture that I had before I came and listened to

1 the other testimonies, I saw about three types
2 of small business and all of them, I realize,
3 have different needs.

4 The first one that I address is a very
5 small one like ours. I think there are
6 thousands and thousands like us which normally
7 don't have any representation just because it's
8 not possible. Then there is the much larger
9 business group of maybe 20 to 200 people.

10 For us, these people really seem to have
11 made it, even though they still have the same
12 characteristics like us and are in the same
13 boat, so to speak, as we are, their resources
14 are still restricted. They are not as
15 vulnerable as we are, but I feel they too still
16 need the help and protection provided, that they
17 are really on their own and do not have the
18 backing and resources of a much larger place.

19 And then for us, and that's just from my
20 perspective, there is a large small business,
21 let's say with about 500 people or even more or
22 less, something like that, and it seems to us,
23 in our perspective, that these large small
24 businesses have the best of both worlds. It
25 seems that some of the large companies with many

1 resources, on their own, wish to be declared
2 small, but they could benefit from the problems
3 which were set up to help the small guys like
4 us, I suspect with the help of lawyers and
5 contracting teams there are all ready to find
6 ways to be declared small. They could form
7 maybe subdivisions, for instance, or they could
8 insist that they started as small and should
9 have the same rights and privileges as they had
10 before.

11 And the question they have "who's hurt by
12 this?" The answer to this question is, we
13 probably are. It's really a matter of resources
14 and equipment, facilities and manpower.

15 For instance, proposal writing is very
16 expensive. We, as a really small company,
17 cannot afford the manpower to set aside for
18 proposal writing. Very often maybe two times a
19 year is all we can afford.

20 The larger small companies with whom we
21 compete with resources of the bigger companies
22 probably have a team ready just for the purpose
23 of proposal writing for these SBIR contracts and
24 a different one when it comes in. Even though
25 they perceive themselves to be small and claim

1 advantages they see that they need to be helped
2 against the very big ones. But they can show
3 and prove that the competition, that they have a
4 team of experts aboard that they have research
5 facilities, which are much larger than ours and
6 especially if they have the backing of another
7 bigger place.

8 So it's very, very hard for a very small
9 start-up company to compete against a company
10 of -- who has more resources available than we
11 have.

12 And that's where the disadvantage comes
13 in. Our chances to win against them are almost
14 zero because they have many more resources and
15 the teams are so much more larger.

16 Concerning ourselves, as I said before, we
17 are now in the process of manufacturing our
18 product, which has been developed under the SBIR
19 Program. There is a temptation for the big
20 companies, for the very big ones, to say that
21 they had a product like ours all along.

22 But we are welcome to share our technology
23 with them, and they also would be willing to
24 integrate us into their system of companies as a
25 small one.

1 But of course, this is not what we want to
2 do. The Small Business Administration has
3 helped us in the past, through the SBIR Program,
4 providing us with research and development
5 funds.

6 We would appreciate it if the SBIR
7 continues to help us to be on our own and give
8 us some assistance in Phase III and bring the
9 product to the market. With our newly developed
10 technology, we want to create jobs locally and
11 opportunities, and we want to market the
12 product. We would like to continue to grow
13 until we reach the point we too are big enough,
14 so that we do not need help anymore.

15 In closing, I want to say I appreciate the
16 fact I could bring my point of view from the
17 very small but certainly innovative business
18 community. Our resources are very small. Our
19 potential is great. Please help us in your
20 considerations and evaluations that we will not
21 be crushed by those who already can afford to be
22 on their own.

23 MS. MANN: Let me gather from your
24 testimony, with respect to the venture capital
25 issue, you would be opposed to SBA allowing

1 small business concerns who are majority-owned
2 by venture capital companies to participate in
3 the SBIR program because they'd be competing
4 against you? They have the venture capital
5 backing and your company doesn't have those same
6 resources?

7 MS. NOWAK: Yeah. And I think there would
8 be a danger for us through their independence,
9 and we want to really try to remain independent
10 with the product we have developed.

11 MS. MANN: Does anyone else have any
12 questions, comments?

13 MS. HEAL: No.

14 MS. MANN: Thank you. Actually, what I
15 think I'm going to do is I think we're going to
16 go ahead and take a break right now. We have
17 two more speakers and then we'll find out anyone
18 else who might want to speak who hasn't already
19 spoken and then we'll probably wrap it up.
20 Let's take a 15-minute break right now.

21 (Whereupon, a recess was taken from 11:21
22 to 11:40 a.m.)

23 MS. MANN: Okay, everybody. We're going
24 to get started again. We're back on the record.
25 And I don't know if I said this earlier, but if

1 everyone could make sure your cellphones are
2 turned to vibrate. I don't remember if I said
3 that. We haven't had a problem, but who knows.
4 Okay.

5 Next on my list I have -- I'm not going to
6 pronounce this right, Dr. Balasubramanian.

7 DR. BALASUBRAMANIAN: You're doing a good
8 job. My name is like -- let me break it down,
9 Balu, my first name. Last name is
10 Balasubramanian, B-A-L-A-S-U-B-R-A-M-A-N-I-A-N.
11 I am the founder and the vice president of
12 technology for a small mom and pop company
13 called ExtRx Corporation, where technology is
14 based on one particular application of polymers
15 based on a polyextrusion technique.

16 My testimony here is based on my personal
17 experience to obtain a SBIR grant. I am in line
18 with the lady who presented from Tennessee a few
19 minutes ago. I'm going to reflect several of
20 the things she mentioned.

21 First of all, the message I have is I am
22 in agreement with the proposal based on the
23 maximum number of employees rather than the
24 bills, the amount of sales, the other one. I
25 request the SBA to consider a different standard

1 for the SBIR Program compared to the other SBA
2 grants, the government grants.

3 The SBIR Program, it's a \$100,000 for six
4 months for the first Phase I, and \$600,000 per
5 year for the three years. This is really a
6 small amount compared to the millions you are
7 talking about in other grants. Even if 500, the
8 maximum number of employees -- 500 makes sense,
9 I would personally believe it should be even
10 lower than 500, like maybe 100 or 250.

11 But for SBIR grants where the amount is
12 really small, I would like you to consider, can
13 you make it even smaller like 25 or maybe 50,
14 because the amount is really small.

15 If you want to see the impact that small
16 amount can make in a company, the company should
17 be small to see the difference. This way, when
18 you really bring the numbers lower, you will see
19 that the grant contract that will be awarded
20 will have an maximum impact on the outcome of
21 the award with respect to the objectives of the
22 SBIR. That's point number one.

23 Point number two, I would like to see if
24 we can -- I propose that SBA consider, if
25 preference, of Phase I versus Phase II. I mean,

1 Phase I you can have more number of Phase I
2 awards and also the amount is really small six
3 month time period. I would like to bring the
4 number even lower to 25, let's say 50 for Phase
5 II, 25 for Phase I. You know the --

6 MS. MANN: I'm going to interrupt you.
7 You probably might have missed the beginning.
8 We want to stay on course with respect to the
9 issues set forth in the hearing notice, which is
10 dealing with the size issues and the limited
11 issue about the ownership on the SBIR.

12 When you start talking about the time
13 limit for the Phase I awards, the amount and the
14 number of awards -- first of all, a lot of that
15 is set in statute, so if you have problems or
16 questions or concerns about that, the place to
17 go would be to write to your Congressman.
18 Really, a lot of that is set forth with the
19 statute, but if you could stick with the issue.

20 DR. BALASUBRAMANIAN: Does it make sense
21 to say that the same standard, 500 numbers --
22 it's hard to apply to small SBIR grants within
23 SBA.

24 MS. MANN: You're talking about the 500
25 employee size standard?

1 DR. BALASUBRAMANIAN: Yes.

2 MS. MANN: I guess my question to you is,
3 are you --

4 DR. BALASUBRAMANIAN: It's not fair that
5 when you expect a company to have five people,
6 10 people to compete for the 100,000 or 600,000
7 to have the -- I mean, it's making it difficult
8 for us to compete.

9 MS. MANN: So are the companies you're
10 competing against -- what are the numbers of
11 employees? Do you know? Do you know how many
12 people are with your company?

13 DR. BALASUBRAMANIAN: Right now we are
14 about only five people now including part-time.

15 MS. MANN: And you find you're competing
16 against people with 499 employees? And are you
17 losing these SBIR --

18 DR. BALASUBRAMANIAN: Yes, we are.

19 MS. MANN: For both Phase I and Phase II?

20 DR. BALASUBRAMANIAN: I believe the reason
21 being that we have one set standard, 500 number,
22 for entire SBA program. I am trying to see if
23 you can somehow differentiate us from the big
24 players, considering the amount.

25 MS. MANN: Okay. For just the SBA?

1 DR. BALASUBRAMANIAN: Yeah.

2 MS. MANN: So, I gather from your
3 testimony you would be opposed to allowing small
4 business concerns owned by venture capital
5 companies into the SBIR?

6 DR. BALASUBRAMANIAN: That one with
7 respect to the issue of possible participation
8 of business majority-owned by venture capital
9 companies. I believe both SBA and the venture
10 capital companies have a common goal to achieve,
11 taking an original idea from a small company and
12 then has a reasonable chance of success, and
13 then support that concept and taking that
14 business to success with bigger business.

15 I really believe that it's perfectly fine
16 for venture capital companies to follow the SBA
17 grants.

18 MS. MANN: Okay. You are for it?

19 DR. BALASUBRAMANIAN: Yeah.

20 MS. MANN: So you wouldn't find competing
21 against small business that's majority-owned by
22 a venture capital company?

23 DR. BALASUBRAMANIAN: That's right, as
24 long as the number is limited.

25 MS. MANN: I mean, the 100 employees or

1 whatever it is?

2 DR. BALASUBRAMANIAN: That's correct.

3 MS. MANN: So, then you would be against
4 allowing an opening of our affiliation rules
5 with respect to the venture capital companies.
6 Because that's really the issue for them is if a
7 venture capital company owned 51 percent or more
8 of a small business concern, and they are
9 affiliated with a small business and we count
10 all the employees, so they are -- some of the
11 comments that came in -- they are asking for
12 exception from affiliation for that. Do you
13 understand my point on this?

14 DR. BALASUBRAMANIAN: I do understand.
15 But, see, I'm not very familiar with the
16 complications. Just because it's a venture
17 capital company, we should not punish a small
18 company from having a fair chance. That's all I
19 have to say. Thanks for the opportunity.

20 MS. MANN: Okay. Thank you. Do you have
21 written testimony? Thanks. Is Shawn Minnetti
22 here? George Lottier? He left too? Okay. How
23 about Alice Bussey? Am I pronouncing it right?
24 Bussey?

25 MS. BUSSEY: Hello, I am Alice Bussey,

1 B-U-S-S-E-Y. I am coowner of Bussey Florists
2 and Gifts. I come representing the Atlanta
3 Business League, having served as Past President
4 and I am current board member for the Minority
5 Business Enterprise Legal Defense and Education
6 Fund out of Washington D.C.

7 I also stand based upon my having been
8 elected as a delegate to the White House
9 Conference on Small Business in 1986 and in
10 1995. After surveying this country with
11 thousands of small business, it was at that
12 determination that the average size was that of
13 25 employees or less, so I stand supporting what
14 we did at that time.

15 I still support that the size standards
16 should be an average of 25 employees, not based
17 upon receipts. Having said that, I was not sure
18 listening to the earlier testimony if I was
19 looking at "small" in the name U. S. Small
20 Business Administration as to what it
21 represented, since I have been in business
22 almost as long as SBA's been in existence, over
23 40 years. "Small" going back when we started
24 and still maintain that we are a small business
25 because we want to be small and we want to be

1 able to serve the community and our
2 constituencies. Using updated technology, but
3 yet maintaining our definition of small.

4 So, I am confused as to what small now
5 represents in the Small Business Administration
6 when the dynamics of 50 years ago was that of an
7 independently operated small business individual
8 who had an idea.

9 And the flip side of that is, that not all
10 of us want to be there to constantly move to the
11 next level, but we want to be able to get
12 resources to maintain and update -- upgrade but
13 yet to maintain the smallness of what we do.

14 And I did not hear that represented, nor
15 have I had that kind of support coming from the
16 SBA, from the finance, from the marketing and
17 support. So, I come based upon that premise
18 that perhaps we really need to look at where we
19 are 50 years later, as far as the definition of
20 small, whether it's size standards or receipts
21 or other.

22 Because it's confusing in the marketplace
23 because SBA is detached from the real small
24 business world in light of the growth and
25 mergers and the new market economy that's being

1 developed out there.

2 So, I think in looking at your size
3 standards, there should be some clarity as to
4 what is the meaning of "small" in your name
5 today. I would recommend that.

6 And the final statement I wanted to make
7 is that the fastest growing business today has
8 one employee, the fastest growing. So, if we're
9 looking at what is the best size and the
10 changing and dynamics of that is that a
11 female-owned business.

12 So, there is some other dynamics we need
13 to look at and many of those are home-based. So
14 there are some other unique factors that need to
15 be considered when we look at size standards.
16 And whether or not we're looking at -- when you
17 are matching us again a procurement opportunity,
18 whether or not that matches our capacity and
19 what you're looking at as far as employees
20 versus capacity with technology.

21 I am in the flower business. I do flower
22 business all over the world, but I also do it
23 through different methods because I have access
24 through technology, I have access through my
25 colleagues and I have access through the

1 marketplace.

2 So, when you look at the dynamics of
3 whether or not, I do -- I do business with the
4 SBA right now, so whether or not I do it through
5 a bid or through a major contract, no. I do it
6 through the small business purchase which GSA
7 and the small business purchase program that
8 exists consist of the largest amount of
9 purchasing for small business and that's why I
10 was saying when you look at your small in your
11 name.

12 So, if you're not dealing with these over
13 the counter, over the phone, the procurement
14 aspect in your definition, it's size as well as
15 how you relate to us. Because 85 percent of us
16 create the majority of the jobs, and we create
17 -- we have the access to the new employer, and
18 the trainee to the marketplace, so we are the
19 majority and we are small; small, not according
20 to what your current standards are, whatever you
21 have on the books, because through this White
22 House Conference on Small Business, it was
23 determined then that what we were doing was not
24 reflecting of what the actual marketplace
25 consisted of and what the small business

1 concerns were.

2 So, we're still at that point now because
3 you're moving in that direction of some 50 years
4 later, and specifically the African-American
5 community has yet to benefit from the full
6 weight of why the U. S. Small Business
7 Administration exists, because we don't have
8 access -- 50 years later we're still at the same
9 rate, 10 percent of the procurement to dollars,
10 access to dollars, as well as -- I think it's a
11 false premise to have go through filling out
12 applications getting 8(a) set-asides, all those
13 other programs, and knowing we're not going to
14 get contracts.

15 And that's why we have a stigma for SBA
16 right now. That's why you have a real problem
17 dealing with the African-American community
18 because that's what happened 50 years down the
19 road. So, there is a lot to deal with this
20 issue other than size, and I just wanted to
21 share that there is history, and there is a
22 report through the Office of Advocacy through
23 SBA from the White House Conference of Small
24 Business where we detailed and went through a
25 lot of this work for you so that that could help

1 you further define and deal with what you were
2 trying to deal with.

3 But we're going to have to do more for the
4 African-American community who really set the
5 tone and the basis for what we are doing now, as
6 well as those new commerce to the marketplace
7 from other ethnic groups that need to have
8 access as well.

9 So, I just wanted to share that with you
10 to let you know that small is not small anymore,
11 according to who came before you today, and that
12 most of us are averaging 25 or fewer employees.

13 And I wanted to make sure you understand
14 that I am here representing the Atlanta Business
15 League, which has been around 72 years and
16 started in Washington D.C., and we're an
17 affiliate and we represent African-American
18 businesses throughout this country and we have
19 done a lot of research.

20 We're on our way to Washington again in
21 September. And we do position papers. We do
22 our homework. But SBA does not service our
23 constituency. I just want to make sure that was
24 on the book.

25 MR. SMITHFIELD: Question. You refer to

1 25 employees. Are you referring to certain
2 segments of the small business economy, or
3 certain industries, or an across the board size
4 standard of 25? Could you clarify that please?

5 MS. BUSSEY: We found in 1986 and 1995, as
6 we met with thousands and researched thousands
7 of small businesses in this country, that the
8 average size was 25, or fewer -- average, that's
9 the average, 25 employees. So that was used
10 during the White House Conference on Small
11 Business as a standard for that participation,
12 in that input to know what is on the mind of
13 small business, what are the recommendations and
14 we were able to affect change and change public
15 policy such as creating a low dock loan for SBA.
16 That came through that whole process because it
17 was very cumbersome as far as that, so that's
18 why SBA -- at that time we used that standard 25
19 or fewer, I mean, 25 as the average and that's
20 across the board.

21 MS. MANN: You've heard testimony from
22 other people here, especially the businesses
23 competing with larger business and DOD
24 contracts, I mean 25 employees are never ever
25 going to be able to compete on a DOD contract in

1 IT or the research development and technology.

2 So are you advocating that SBA should just help

3 -- I'm not sure what you're advocating.

4 MS. BUSSEY: I am glad you asked that
5 question. In defining small, you're going to
6 have to do some homework, because the people
7 that come before you who have the resources, who
8 have the time and the money are going to be that
9 15 percent, the 20 percent, and you become the
10 agent for that 15 or 20 percent, which are
11 usually those medium-size larger corporations;
12 they are not small, dependent operating, which
13 is the 85 percent.

14 So, the majority of the businesses that
15 are small in this country usually represent
16 creating 85 percent of the jobs, and they are
17 one person, two person, up to the 25.

18 And so if you don't have a way to access
19 them, they will not be at the table here. They
20 will not come to these kinds of hearings. You
21 won't be able to give them business.

22 But you can give us businesses through
23 your small purchase program, but you're not
24 dealing with that piece of it. You're only
25 dealing with large bids, the SBIR and all the

1 other major deals. I'm not saying you should
2 not deal with that. You are dealing with that,
3 but there should be a flip side that you should
4 have a hearing, or a process in place to deal
5 with the actual small business in this country.

6 MS. MANN: Okay. I think I understand.
7 Did anyone else have any questions? No? Thank
8 you very much. I have Bill Daniel.

9 MR. DANIEL: Thanks for seeing me with no
10 pre-registration. My name is Bill Daniel.
11 Don't need to spell that. I am an owner of a
12 veteran-owned small business firm and our
13 standard industrial classification code is 8713.
14 We're a consulting civil engineering firm.

15 We are currently, as we've talked about
16 y'all have heard here today, that the small
17 business threshold for our SIC code is 4 million
18 dollars.

19 Currently there is really only three ways
20 that we can get work either as an 8(a) firm, or
21 as small business firm under that 4 million
22 dollar threshold, or then we go into the large
23 business threshold that we compete with.

24 My firm has been fairly lucky and good and
25 we're about to go over that threshold. When we

1 do, we'll be competing with firms that are in
2 the billion dollar category, 30,000 to 40,000
3 employees. Sure, some of them only have a
4 couple hundred, but once you go over that 4
5 million dollar threshold, there is nothing in
6 the middle. You're either small business
7 classified under 4 million dollars or you're a
8 large business.

9 We'll be competing with firms that we just
10 won't be able to compete with. Many times the
11 contracts that you ask for us to go perform, we
12 do a lot of work for the Corps of Engineers and
13 other federal agencies, and even though it's a 4
14 million dollar small business set-aside
15 contract, you'll have to have 3 or more million
16 dollars' worth of equipment just to go do the
17 contract. Airplanes, aerial photography,
18 surveying equipment, hydrographic survey books,
19 and so forth.

20 So, even though our contracts are
21 quality-based selection, that is, we're selected
22 based on our qualifications, not our price, and
23 that's a good thing, we still think that
24 something needs to be done to increase the
25 threshold of that 4 million dollars. In my

1 case, yes, it's going to do us good, because we
2 won't be competing with the big boys. But it
3 will also increase the government's allocation
4 to small business set-aside.

5 I think that's a good thing for the
6 government. All Administrations in the last
7 four or five Administrations have said we want
8 to increase our small business contracting
9 dollar awards for this particular SIC code for
10 surveying and engineering. The way that they
11 make that happen is they increase the small
12 business set-aside threshold.

13 I'm going to advocate that we increase
14 that to at least 100 people, 100 employees, and
15 or double the size from 4 million to 8 million.

16 We have a general classification in our
17 consulting business of 50 dollars per person per
18 hour. If you do that math, that runs to about
19 10 million dollars a year.

20 I would advocate again -- I have got about
21 50 employees, so you see we're going to go over
22 that threshold, over that 4 million dollar
23 threshold this year. But again, if it can be
24 increased, I think it's both in the government's
25 best case and my best interest.

1 MS. MANN: Did anyone have any questions?

2 MR. MORAN: No.

3 MS. HEAL: I do. In order to get a
4 specific size standard increase, because right
5 now we're looking at the overall size standards,
6 should we go to number of employees, should we
7 rewrite the affiliation? There is a process,
8 and I have worked on many changes in the size
9 standard, you petition SBA, in writing, to our
10 office, Office of Size Standards. You can find
11 how to do that on our website which is
12 www.sba.gov/size.

13 We'll need all the information, what
14 you're petitioning, like your recommendation
15 from 4 to 8 million, or 100 employees and
16 back-up detail as to why.

17 You started talking about \$50 per labor
18 equipment, you know, the investments that you're
19 making, and all of that, and then if you could
20 get all -- if other people in your industry feel
21 the same way, if you could get them to petition
22 SBA, then we'll do a formal industry study and
23 go from there.

24 MR. DANIEL: Okay. Thanks a lot.

25 MS. MANN: I have gone through all the

1 list of everyone who is registered that I have.

2 Is there anyone out there who would like to
3 speak that hasn't already spoken? No other
4 testimony? Okay. Oh. Could I get your name?

5 MS. SMITH: Adeena Smith.

6 MS. MANN: Okay. Sure, come on up. And
7 were you here at the beginning? You know the
8 purpose of this hearing?

9 MS. SMITH: Mm-hmm.

10 MS. MANN: And if you could spell your
11 name for the record.

12 MS. SMITH: A-D-E-E-N-A, Smith. My name
13 is Adeena Smith. I am with, owner of Kera
14 Enterprises, also owner of Hats Under Atlanta
15 for 16 years at Underground Atlanta, and the
16 Mall West End. I have had an average of five
17 employees for 16 years.

18 After listening to the testimony today,
19 the only experience I have had since I have been
20 marketing to the federal government, I have had
21 an opportunity two years ago to get into the
22 safety supply business. My company is 8(a) and
23 hub zone, not dealing with size standards
24 because I haven't gotten there yet, or dollar
25 amount. However, I have bid on two federal

1 contracts. They were awarded to large companies
2 that were set-aside for small business.

3 So my concern is, when you do have these
4 size standards, how is it regulated?

5 MS. MANN: Well, we have a protest
6 mechanism. What you could have done is that, if
7 these businesses you thought were large won the
8 award, you should have protested. You send your
9 protest -- you can find it on our website -- you
10 submit the protest to the contracting officer
11 who then forwards it onto your Office of
12 Hearings and Appeals.

13 It's an administrative board that's
14 really -- they are part of SBA, but they are
15 separate from SBA.

16 MS. HEAL: No, it's a size standard that
17 would go to a size specialist.

18 MS. MANN: Right, I jumped ahead.

19 MS. HEAL: It would go to people like
20 Steve Smithfield. Wherever the company is
21 located, it goes to a size specialist. We have
22 six area offices, and actually we have about 10
23 people doing size determinations, and there is
24 an official protest procedure. And like Laura
25 said, it is on our website, but it's also in the

1 Federal Acquisition Regulation that you just
2 call up, you just submit to the contracting
3 officer saying "I don't think this company is a
4 small business, because." You have to have
5 information. We won't take anything on hearsay,
6 you know, this company is large because in this
7 newspaper it said it was bought out by IBM three
8 months ago.

9 MS. SMITH: My understanding is you also
10 have to be registered in CCR and they were not,
11 so I am wondering whether the contracting
12 officers are even checking that.

13 MS. HEAL: The companies have to be
14 registered in CCR in order to get paid. That's
15 the payment system. That's why.

16 MS. FOWLER: If they are not they are not
17 going to get paid. They gave us free work.

18 MS. SMITH: So it's not prior to the
19 award, it's prior to getting paid?

20 MS. HEAL: They have to be at award, at
21 award.

22 MS. SMITH: Yeah. Well, that wasn't the
23 case. But since I am new at this, I did protest
24 and realize later there was a formal protest,
25 but then no one responded to my protest even

1 though it wasn't accurate, so --

2 MS. MANN: Okay.

3 MS. SMITH: All right. Thank you.

4 MS. HEAL: If you want to talk to Steve
5 after this, he can explain this.

6 MS. MANN: Is there anyone else that
7 wanted to speak? Okay. I think we're going to
8 go ahead and give our closing remarks.

9 MS. FOWLER I'm going to let my District
10 Director of the State of Georgia do the honors.

11 MS. DENISON: I'd like to thank you all
12 are taking time out of your very busy morning
13 and schedules and coming here to share with us
14 your thoughts about the size standards.

15 Please be assured that we will give
16 careful consideration at the agency of your
17 input here today. We will have several other
18 hearings around the country with the last one
19 occurring in Los Angeles on June 29th.

20 And then, based on the input from all 11
21 hearings, there will be a development of, I
22 guess, additional proposed rules that will be
23 made available for additional comment. Thank
24 you once again for hopefully helping get us in
25 position to do the right thing and to come up

1 with size regulations that will be helpful to
2 the majority of small businesses in this
3 country. Thank you.

4 MS. MANN: Thank you.

5 MS. FOWLER: Thank you very much for
6 coming.

7 MS. MANN: The public hearing is adjourned
8 at 12:07 p.m.

9 (Hearing adjourned at 12:07 p.m.)
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C E R T I F I C A T E

STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing
proceedings were taken down, as stated in
the caption, and reduced to typewriting under
my direction, and that the foregoing pages 1
through 117 represent a true, complete,
and correct transcript of said proceedings.

This, the 20th day of June, 2005.

MAUREEN S. KREIMER, CCR-B-1379
Certified Court Reporter